



changing tides

family services

Policy/Procedure

Policy/Procedure No: 701.01

Policies and Procedures Regarding the Serious Deficiency Process for Providers Participating in the Child and Adult Care Food Program

RATIONALE: This policy/procedure is needed to comply with *Child and Adult Care Food Programs* Guidelines issued by the California Department of Education, Child Nutrition Services, NSD-USDA 07-2009.

POLICY: It is the policy of Changing Tides Family Services to comply with the obligations of programs it administers.

DEFINITIONS:

1. CACFP- The Child and Adult Care Food Program, a federal program which is administered through the California Department of Education, Nutrition Services Division.
2. Changing Tides Family Services/CACFP- Changing Tides Family Services/Child Care and Adult Food Program, the local sponsor that contracts with California Department of Education to sponsor eligible entities to participate on the Child and Adult Care Food Program (SO)
3. SO- Sponsoring organization (Changing Tides Family Services). Also called "sponsor".

BACKGROUND AND SUPPORTING DOCUMENTS: See above, and also refer to the Child and Adult Care Food Program Integrity Training Manual, Title 7, Code of Federal Regulations, Parts 226(l) and 226.16 (l); Nutrition Services Division Management Bulletin NSD-USDA-07-2009

PROCEDURES:

Serious Deficiency Determination

1. Steps will be followed in accordance with timelines, levels of review, and steps as described in NSD-USDA-07-2009 (Attached)
2. Changing Tides Family Services must initiate action to terminate the agreement of a day care home (provider) for cause in the operation of the CACFP, if Changing Tides Family Services determines the provider has committed one or more of the

serious deficiencies listed below. Failure for Changing Tides Family Services to take appropriate action with regard to a Serious Deficiency (SD) could jeopardize Changing Tides Family Services' ability to remain a sponsor in good standing, and could result in Changing Tides Family Services itself becoming identified as Seriously Deficient.

Per Section 226.16 (l)(1) of 7CFR, Changing Tides Family Services must initiate action to terminate the agreement of a day care home for cause if it determines the day care home has committed one or more of the serious deficiencies listed in i-ix below.

- i. Submission of false information on the application (sponsor/provider agreement)
- 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 the children in care or the public health or safety
- vii. A determination that the provider 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 circumstance related to non-performance under the agreement between the provider and Changing Tides Family Services as specified by Changing Tides Family Services or the California Department of Education, Nutrition Services Division

Upon making a Serious Deficiency determination, if the provider does not take action to fully and permanently correct the serious deficiency within the allotted time, the provider's agreement must be terminated.

Serious Deficiency Notice

Once a day care home provider is found to be Seriously Deficient, Changing Tides Family Services will immediately send a Serious Deficiency Notice (Sample Letter A) to the provider and send a copy to the California Department of Education (CDE), Nutrition Services Division (NSD), and Program Integrity Unit (PIU). The notice must:

- a. Clearly describe the SD finding(s)
- b. State the legal basis for each SD basis (citing the SD regulations) as well as specific provisions in the sponsor/provider agreement and/or regulations that support the SD finding (s)
- c. Inform the provider that the voluntary termination from the CACFP will result proposed disqualification of the provider
- d. Specify the corrective action(s) to be taken and the time allotted to correct the SD finding(s). Corrective action(s) must be taken as soon as possible, but not to exceed 30 days.

- e. State that failure to fully and permanently correct each SD finding will result in proposed termination of the provider's CACFP agreement and the proposed disqualification of the provider
- f. Notify the provider that there are no appeal rights for the SD determination.
- g. Inform the provider that program payments will be made during the corrective action period.

It is Changing Tides Family Services' policy to monitor day care home providers' operation of the CACFP. If, during a monitoring visit, the Changing Tides Family Services identifies findings and is unsure if the finding(s) constitute an immediate issuance of a SD notice, Changing Tides Family Services will document in its monitoring report the finding(s) and what corrective actions must be taken to resolve the finding(s). The provider, if available, must sign the monitoring report as acknowledgement that the finding(s) and corrective actions have been explained to the provider. Changing Tides Family Services will also notify the provider of the finding(s) and required corrective actions in a separate letter.

Recordkeeping requirements of the provider: If, on a first offense, a provider fails to provide records for not more than two days, Changing Tides Family Services must follow the monitoring report requirements stated above. If a provider has failed to provide records for more than two days, Changing Tides Family Services shall immediately issue a SD notice. Staff will consider all the facts surrounding the reason for the finding(s) and determine the appropriate action. In a case where Changing Tides Family Services allows a provider more than two days without records and does not declare the provider SD, Changing Tides Family Services will indicate, in its program file for the day care home provider, the reason(s) why the SD notice was not issued. If a SD notice is eventually issued, Changing Tides Family Services must tell the PIU why the SD notice was not issued when the sponsor first was aware of the recordkeeping finding.

Corrective Action

Changing Tides Family Services may allow the provider no more than 30 days from the receipt date of the Serious Deficiency Notice to submit a Corrective Action Plan. In most situations, the provider will be expected to implement permanent corrective action in less time.

If the provider corrects the SD finding(s) within the allotted time and to Changing Tides Family Services' satisfaction, Changing Tides Family Services will send a notice of Successful Correction Action, Rescission of Serious Deficiency (Sample Letter B) to the provider using a method of delivery that confirms receipt and/or delivery of the notice. A copy of the rescission notice will also be sent to the PIU. The rescission notice must inform the provider that:

- Corrective action(s) must be permanent
- If corrective action(s) is/are not permanently corrected, Changing Tides Family Services will immediately propose termination and disqualification of the provider
- The provider may not transfer to another sponsoring organization until Changing Tides Family Services completes an additional monitoring visit (no

- later than 180 days after the date of the rescission notice) verifying the provider implemented permanent corrective actions for the SD(s)
- If it is found in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, Changing Tides Family Services will immediately propose to terminate the provider's agreement for cause and propose to disqualify the provider without any further opportunity for corrective action.

Health and Safety Violations

In accordance with 7CFR Section 226.16 (l)(4), if Changing Tides Family Services becomes aware that a provider has been cited for a serious health and safety violation by state or local health official, or by a licensing official, Changing Tides Family Services must immediately suspend the provider's CACFP participation, even before any formal action has been taken to revoke the provider's license. If Changing Tides Family Services determines that there is imminent threat to the health or safety of participants in the home, or the provider engages in activities that threaten public health or safety, Changing Tides Family Services must immediately notify Community Care Licensing and issue to the provider the "Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety" (Sample Letter G) notice, with appeal procedures (Attachment 1, Appeal Procedures for Day Care Homes). These documents will be sent utilizing a method of delivery that confirms receipt and/or delivery of the notice. Changing Tides Family Services will attempt to obtain a copy of the state or local licensing official's report. The report can be used to substantiate the sponsor's suspension action. A copy of the suspension notice must also be sent to the PIU. The notice must:

- Inform the provider that participation in the CACFP has been suspended and that the provider has been designated as Seriously Deficient and that Changing Tides Family Services is proposing termination and disqualification
- Specify the Serious Deficiency(ies) found
- State that participation, including all program payments will remain suspended until the administrative review is concluded
- Inform the provider that if the administrative review official overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension
- Inform the provider that the termination of their CACFP agreement will result in the placement of the provider on the National Disqualified List (NDL)
- Inform the provider that if he/she voluntarily terminates their CACFP agreement after receiving the suspension notice, the provider will be terminated for cause and placed on the NDL.

Proposed Termination and Disqualification After SD Notice Rescinded

In the event that a SD determination has been rescinded, if it is found in any subsequent review that any of the Serious Deficiencies have not been fully and permanently corrected, Changing Tides Family Services will immediately propose to terminate the agreement with the provider for cause and will propose to disqualify the provider without any further opportunity for corrective action. Ie, if in a future review the

same or similar deficiency(ies) are found, the provider has demonstrated that their corrective action plan was not **permanently implemented**. Accordingly, Changing Tides Family Services must issue a Notice of Proposed Termination and Proposed Disqualification.

Proposed Termination of Agreement

If a provider fails to **permanently** correct the Serious Deficiency(ies) in the time allotted for correction action **or any time after the original SD notice has been rescinded**, Changing Tides Family Services must issue a Notice of Proposed Termination and Proposed Disqualification (Sample Letter C) to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice and submit a copy of the notice to the PIU. The notice must:

- Reference the SD notice and state *why* corrective action was not acceptable (or state that the provider failed to submit a corrective action document within the time allotted).
- Offer the provider the opportunity to appeal, including appeal procedures (Attachment 3, Appeal Procedures for Day Care Homes)
- Notify the provider that the termination of the provider's CACFP agreement will result in termination for cause and disqualification from the CACFP
- Notify the provider that voluntary termination of the CACFP agreement after the receipt of the proposed termination/disqualification notice will still result in the proposed disqualification
- Notify the provider that he/she may continue to participate in the CACFP through the appeal deadline, or, if an appeal is requested, until the hearing officer issues a decision

(7 CFR Section 226.16 (l)(3)(iii))

Hearing Official's Decision

The hearing official must be independent and impartial. If the administrative review official is an employee or board member of Changing Tides Family Services, he/she must not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review.

In accordance with Section 226.6(l)(5)(ii) "the day care home may retain legal counsel, or may be represented by another person." Therefore, if the provider is represented in an appeal by another person, the hearing official must be sure that all correspondence and communication pertaining to the appeal is done through the individual representing the provider. The hearing official must base his/her decision on the documents and testimony provided by the sponsor and the provider, on the applicable federal regulations, and on the applicable CDE and USDA guidance governing the CACFP. The hearing official must not issue a decision in favor of the provider based solely on the provider's "promise" or "agreement" to abide by CACFP requirements. The hearing official's decision must be issued to the sponsor and the provider within 30 days from the receipt date of the hearing request. The hearing official's decision must include the documents reviewed, the legal basis(es), and facts supporting the decision. The decision issued by the hearing official is the final

determination to be afforded to the provider (7 CFR Section 226.6 (l)(5)(v) and (vii). A copy of the hearing official's decision must be sent to the PIU.

Rescission of Serious Deficiency, Proposed Termination, and Proposed Disqualification After Provider Wins Appeal

If the hearing official overturns the sponsor's proposed termination and proposed disqualification actions, the sponsor must issue a:

- Rescission of Serious Deficiency, Proposed Termination, and Proposed Disqualification (after provider wins appeal)(Sample Letter F), or
- Rescission of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health or Safety (after provider wins appeal)(Sample Letter J)

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU

If, in the future, the sponsor determines that the provider has committed the same or similar serious deficiency, the sponsor cannot move directly to proposed termination and proposed disqualification. Rather, the sponsor must implement the SD process from the beginning.

Agreement Termination and Disqualification

In accordance with 7CFR Section 226.16 (l)(3)(v), if the provider does not submit a timely request for appeal, or if the hearing official upholds the sponsor's proposed actions, the sponsor must immediately terminate the provider's agreement to participate in the CACFP and disqualify the provider from future CACFP participation. If the hearing official upholds the sponsor's proposed actions, the sponsor must issue to the provider a:

- Notice of Termination and Disqualification (after sponsor wins appeal) (Sample Letter D), or
- Notice of Termination and Disqualification: Imminent Threat to Health or Safety (after sponsor wins appeal) (Sample Letter H)

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU.

The date of the termination and disqualification will be the date of the hearing official's decision.

If the provider did not request an appeal, the sponsor must issue to the provider a:

- Notice of Termination and Disqualification (following failure to appeal)(Sample Letter E), or
- Notice of Termination and Disqualification: Imminent Threat to Health or Safety (following failure to appeal)(Sample Letter I)

The letter must be sent to the provider utilizing a method of delivery that confirms receipt and/or delivery of the notice, and a copy of the notice must be sent to the PIU. the effective date will be the day after the appeal deadline.

Changing Tides Family Services must also provide the PIU with a Site Change Request (SCR) form dropping the provider. This will be done on a different form than the regular add, drop, or modified providers. Changing Tides Family Services must also provide the PIU with the provider's date of birth and any amount owed to the CACFP as a result of the SD.

FORMS

REQUIRED: See Attached Sample Letters

Revised Date: 11/30/09

11/16/07

Approved By: Signed by Carol A. Hill
Carol A. Hill, Executive Director

Serious Deficiency Process
Sample Letter A: Serious Deficiency Notice

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*brief description of the basis for the serious deficiency determination – review, parent survey, etc. and date*] of your operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/parent survey/etc.*], we have determined that you are seriously deficient in your operation of the CACFP. If you do not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date, we will:

- Propose to terminate your agreement to participate in the CACFP for cause, and
- Propose to disqualify you from future CACFP participation.

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 day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the state agency determines that the serious deficiencies have been corrected or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

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

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

The following paragraphs detail each serious deficiency and the corrective action required.

Insert discussion of serious deficiencies and required corrective action. Each serious deficiency discussed must include a citation to the relevant serious deficiency in the regulations at 226.16(l)(2) and must also include the regulation(s) or specific citation(s) from the sponsor/provider agreement that support the serious deficiency determination (if the serious deficiency is not specifically listed, cite 7 *CFR* 226.16[l][2][ix] “any other circumstance related to non-performance under the sponsoring organization-day care home agreement”).

Serious Deficiency Process
Sample Letter A: Serious Deficiency Notice
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SUMMARY

We have determined that you are seriously deficient in your operation of the CACFP. You must provide us documentation that shows you have taken the required corrective action for each of the serious deficiencies cited in this letter. The documentation must be **received** (not just postmarked) by [*corrective action deadline*]. **The sponsor may establish different deadlines for different serious deficiencies but the deadline must not exceed 30 days.**

If we do not receive the documentation of your corrective action by the due date, or if it is determined that the actions taken do not fully and permanently correct all of the serious deficiencies, we will propose to terminate your CACFP agreement for cause and will propose to disqualify you.

You may not appeal the serious deficiency determination. However, if we propose to terminate your agreement for cause or propose to disqualify you, you will be able to appeal those actions and you will be advised of your appeal rights and the appeal procedures at that time.

You may continue to participate in the CACFP during the corrective action period. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

[Insert if applicable: “If we receive the documentation of your corrective action by the due date and determine that it fully and permanently corrects all of the serious deficiencies, then an unannounced follow-up review will be conducted to verify the adequacy of the corrective action.”] If we find in [insert if applicable: “the follow-up review or”] any subsequent review that any of these serious deficiencies have not been fully and 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,

Sponsor Employee’s Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Serious Deficiency Process

Sample Letter B: Successful Corrective Action, Rescission of Serious Deficiency

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the determination in the [*date of Serious Deficiency Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP).

We received the documentation you sent detailing the actions you have taken to correct these serious deficiencies on [*date*], before the corrective action deadline. **[Insert if applicable: “We conducted a follow-up review on [*date*] to verify the adequacy of the corrective actions.”]**

SERIOUS DEFICIENCY DETERMINATION RESCINDED

Based on the review of the documentation **[insert if applicable: “and the [*date*] follow-up review”]**, we have determined that you have fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice. As a result, we have rescinded the serious deficiency determination as of the date of this letter.

ADEQUACY OF CORRECTIVE ACTIONS

The following paragraphs describe the results of our review of the corrective action. **[Insert discussion of each serious deficiency and why the corrective action is adequate. Each serious deficiency discussed must include a citation to the relevant serious deficiency in the regulations at 226.16(l)(2) and must also include the regulation(s) or specific citation(s) from the sponsor/provider agreement that support the serious deficiency determination (if the serious deficiency is not specifically listed, cite 7 CFR 226.16(l)(2)(ix) “any other circumstance related to non-performance under the sponsoring organization-day care home agreement”).]**

[Insert if appropriate: Our report on the [*date*] follow-up review will be provided to you in a separate letter.]

Serious Deficiency Process

Sample Letter B: Successful Corrective Action, Rescission of Serious Deficiency

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SUMMARY

We have rescinded the serious deficiency determination. However, if it is found in any subsequent review that any of these serious deficiencies have not been fully and permanently corrected, we will immediately propose to terminate your agreement for cause and propose to disqualify you without any further opportunity for corrective action.

Please note that although the serious deficiency determination has been rescinded, you will not be allowed to transfer to another day care home sponsoring organization until this agency has conducted a follow-up monitoring visit to ensure that the corrective action is permanent. The follow-up visit will be conducted no later than 180 days after the date of this letter.

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Serious Deficiency Process

Sample Letter C: Notice of Proposed Termination and Proposed Disqualification

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the determination in the [*date of Serious Deficiency Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the Child and Adult Care Food Program (CACFP). You received the Serious Deficient Notice that was sent to you by [*delivery method*] on [*date*].

We received the documentation you sent us detailing the actions you have taken to correct these serious deficiencies on [*date*], before the corrective action deadline. **[Insert if applicable: “A follow-up review was conducted on [*date*] to verify the adequacy of the corrective actions.”]**

Based on our review of the documentation **[insert if applicable: “and the follow-up review”]**, it has been determined that you have not fully and permanently corrected the serious deficiencies that were cited in the Serious Deficiency Notice.

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

As a result, we are:

- Proposing to terminate your agreement to participate in the CACFP for cause effective [*date*], and
- Proposing to disqualify you from future CACFP participation effective [*date*].

[The effective date for the termination/disqualification must be after the deadline for requesting an appeal. In addition, the effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

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 day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the state agency determines that the serious deficiencies have been corrected or until seven years after your disqualification.

Serious Deficiency Process

Sample Letter C: Notice of Proposed Termination and Proposed Disqualification

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However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

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

STATUS OF SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency and its status based on our review of the corrective action documentation **[insert if applicable: “and the [date] follow-up review”]**.

[Insert discussion of each serious deficiency and the reasons why corrective action was inadequate (the corrective action may be adequate for some items and not for others; make sure you specify the status of the corrective action for each serious deficiency).

Each serious deficiency discussed must include a citation to the relevant serious deficiency in the regulations at 226.16(l)(2) and must include the regulation(s) or specific citation(s) from the sponsor/provider agreement that support the serious deficiency determination (if the serious deficiency is not specifically listed, cite 7 CFR 226.16[l][2][ix] “any other circumstance related to non-performance under the sponsoring organization-day care home agreement”).

APPEAL OF PROPOSED TERMINATION AND PROPOSED DISQUALIFICATIONS

You may appeal 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 proposed actions, make sure you follow the appeal procedures exactly because the failure to do so could result in the denial of your request for an appeal.

SUMMARY

You have not fully and permanently corrected the serious deficiencies identified in the Serious Deficiency Notice. For this reason, we are proposing to terminate your CACFP agreement for cause and proposing to disqualify you.

If you appeal the proposed termination and the proposed disqualification, 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 [date]. If you do not appeal your proposed disqualification, you will be disqualified from future CACFP participation effective [date] and placed on the National Disqualified List.

Serious Deficiency Process

Sample Letter C: Notice of Proposed Termination and Proposed Disqualification

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You may continue to participate in the CACFP until [*termination/disqualification effective date*] 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,

Sponsor Employee's Name and Title

Enclosure: Appeal Procedures

cc: Nutrition Services Division, Program Integrity Unit

Serious Deficiency Process

Sample Letter D: Notice of Termination and Disqualification (after sponsor wins appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Notice of Proposed Termination & Proposed Disqualification*] letter (Notice of Proposed Termination & Proposed 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. These actions were based on the determination in the [*date of Serious Deficiency Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You received the Notice of Proposed Termination and Disqualification that was sent to you by [*method of delivery*] on [*date*]. You filed a timely appeal of the proposed termination and proposed disqualification. On [*date of appeal official’s decision*], the Administrative Review Official issued a decision on the appeal. In that decision, both of the proposed actions were upheld.

TERMINATION AND DISQUALIFICATION

As a result, [*insert name of sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for cause effective [*date of hearing official’s decision*]
- Disqualifying you from future CACFP participation effective [*date of hearing official’s decision*]

[The effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

Serious Deficiency Process

Sample Letter D: Notice of Termination and Disqualification (after sponsor wins appeal)

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SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You **may not appeal** the termination of the agreement for cause or the disqualification. You may continue to participate in the CACFP until [*termination/disqualification effective date*]. Any valid claims for reimbursement submitted by you for this period will be paid. You must submit the claims by the normal deadline.

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Serious Deficiency Process for Providers

Sample Letter E: Notice of Termination and Disqualification (following failure to appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Notice of Proposed Termination & Proposed Disqualification*] letter (Notice of Proposed Termination & Proposed Disqualification), which proposed to terminate your agreement to participate in the Child and Adult Care Food Program (CACFP) for cause. In that letter, [*insert name of sponsoring organization*] also proposed to disqualify you from further CACFP participation. These actions were based on the determination in the [*date of Serious Deficiency Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You received the Notice of Proposed Termination & Proposed Disqualification that was sent to you by [*delivery method*] on [*date received*]. You had until [*insert deadline for requesting appeal*] to submit any requests for appeals of the proposed actions. No request for appeals was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

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

- Terminating your agreement to participate in the CACFP for cause effective [*date, day after the appeal request deadline*], and
- Disqualifying you from future CACFP participation effective [*date, day after the appeal request deadline*]

[The effective date for the disqualification should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

Serious Deficiency Process

Sample Letter E: Notice of Termination and Disqualification (following failure to appeal)

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SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You **may not appeal** the termination of the agreement for cause or the disqualification. You may continue to participate in the CACFP until [*termination/disqualification effective date*]. We will pay any valid claims for reimbursement submitted by you for this period. You must submit the claims by the normal deadline.

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Serious Deficiency Process

Sample Letter F: Rescission of Serious Deficiency, Proposed Termination, and Proposed Disqualification (after provider wins appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider's Name

Provider's Street Address

Provider' City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Notice of Proposed Termination & Proposed Disqualification*] letter (Notice of Proposed Termination & Proposed Disqualification) that was sent to you by [*delivery method*] and received on [*date*], 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. These actions were based on the determination in the [*date of Serious Deficiency Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the proposed termination and proposed disqualification. On (*date of hearing official's decision*), the Administrative Review Official issued a decision on the appeal. In that decision, both of the proposed actions were overturned.

SERIOUS DEFICIENCY DETERMINATION RESCINDED

As a result, we have rescinded the serious deficiency determination as of [the date of the Administrative Review Official's decision]. We are also rescinding the proposed termination of your agreement for cause and your proposed disqualification as of the same date.

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Suspension of Providers

Sample Letter G: Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*brief description of the basis for the serious deficiency determination – review, parent survey, etc. and date*] of your operation of the Child and Adult Care Food Program (CACFP).

SERIOUS DEFICIENCY DETERMINATION

Based on the [*review/parent survey/etc.*], [*insert name of sponsoring organization*] has determined that you are seriously deficient in your operation of the CACFP.

SUSPENSION

One of the serious deficiencies identified is the imminent threat to the health or safety of CACFP participants or the public (for details, see the description of the serious deficiencies later in this letter). Because of this imminent risk, [*insert name of sponsoring organization*] is suspending your CACFP participation (including all program payments).

The suspension of CACFP participation (including all program payments) will take effect on the date of this letter. This action is being taken pursuant to Section 226.16(l)(4) of the CACFP regulations (7 CFR 226.16[l][4]).

PROPOSED TERMINATION AND PROPOSED DISQUALIFICATION

We are also:

- Proposing to terminate your agreement to participate in the CACFP for cause effective [*date*]
- Proposing to disqualify you from future CACFP participation effective [*date*]

[The effective date for the termination/disqualification must be after the deadline for requesting an appeal. In addition, the effective date for the disqualifications should generally be the same as the agreement termination date, and not earlier; otherwise, the provider could be disqualified and ineligible to participate before the agreement is terminated.]

Serious Deficiency Process

Sample Letter G: Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety

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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 day care home provider. In addition, you will not be able to serve as a principal in any CACFP institution or facility. You will remain on the list until such time as the state agency determines that the serious deficiencies have been corrected or until seven years after your disqualification. However, if any debt relating to the serious deficiencies has not been repaid, you will remain on the list until the debt has been repaid.

These actions are being taken pursuant to Section 226.16(l)(4) of the CACFP regulations (7 *CFR* 226.16[l][4])(ii)(E).

SERIOUS DEFICIENCIES

The following paragraphs detail each serious deficiency.

[Insert discussion of serious deficiencies. Each serious deficiency discussed must include a citation to the relevant serious deficiency in the regulations at 226.16(l)(2) and must also include the regulation(s) or specific citation(s) from the sponsor/provider agreement that support the serious deficiency determination (if the serious deficiency is not specifically listed, cite 7 *CFR* 226.16(l)(2)(ix) “any other circumstance related to non-performance under the sponsoring organization-day care home agreement.)”

APPEAL OF SUSPENSION, PROPOSED TERMINATION, AND PROPOSED SUSPENSIONS

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 the failure to do so could result in the denial of your request for an appeal.

SUMMARY

We are suspending your CACFP participation (including all program payments). In addition, we are proposing to terminate your agreement for cause and proposing to disqualify you.

The suspension will remain in effect during the period of any appeal. However, if you request an appeal and the Administrative Review Official overturns the suspension, any valid claims for reimbursement submitted by you for the period of the suspension will be paid. As always, we will deny any portion of a claim that is determined to be invalid.

Serious Deficiency Process

Sample Letter G: Combined Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification Notice: Imminent Threat to Health or Safety

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If you appeal the proposed termination and the proposed disqualification, the proposed actions will not take effect until the Administrative Review Official issues a decision on the appeals. If you do not make a timely request for an appeal, your agreement will be terminated for cause on [date]. If you do not appeal your proposed disqualification, you will be disqualified from future CACFP participation effective [date] and placed on the National Disqualified List.

Sincerely,

Sponsor Employee's Name and Title

Enclosure: Appeal Procedures

cc: Nutrition Services Division, Program Integrity Unit

Suspension of Providers

Sample Letter H: Notice of Termination and Disqualification: Imminent Threat to Health or Safety (after sponsor wins appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider's Name

Provider's Street Address

Provider's City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Combined Notice*] letter that was sent to you by [*method of delivery*] and received on [*date*], which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in the [*date of Combined Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the suspension, proposed termination, and proposed disqualification. On [*date of appeal official's decision*], the Administrative Review Official issued a decision on all of the appeals. In that decision, the suspension and both of the proposed actions were upheld.

TERMINATION AND DISQUALIFICATION

As a result of this decision, we are:

- Terminating your agreement to participate in the CACFP for cause effective [*date of decision*]
- Disqualifying you from future CACFP participation effective [*date of decision*]

SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You **may not appeal** the termination of your agreement for cause or your disqualification.

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Suspension of Providers

Sample Letter I: Notice of Termination and Disqualification: Imminent Threat to Health or Safety (following failure to appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition “notice”) in the regulations.

Date

Provider’s Name

Provider’s Street Address

Provider’s City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Combined Notice*] letter, which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, [*insert name of sponsoring organization*] also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in our [*date of Combined Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You received the [*date of Combined Notice*] letter on [*date received*] that was sent to you by [*method of delivery*]. You had until [*insert deadline for requesting appeal*] to submit any request for an appeal of the proposed actions. No request for an appeal was submitted by that deadline.

TERMINATION AND DISQUALIFICATION

Because the time to request an appeal has now expired, [*insert name of sponsoring organization*] is:

- Terminating your agreement to participate in the CACFP for cause effective [*day after appeal deadline*]
- Disqualifying you from future CACFP participation effective [*day after appeal deadline*].

SUMMARY

We are terminating your CACFP agreement for cause and disqualifying you. You **may not appeal** the termination of your agreement for cause or your disqualification.

Sincerely,

Sponsor Employee’s Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Suspension of Providers

Sample Letter J: Rescission of Serious Deficiency, Suspension, Proposed Termination, and Proposed Disqualification: Imminent Threat to Health or Safety (after provider wins appeal)

Note: This letter must be sent by certified mail/return receipt or an equivalent private delivery service (such as FedEx), fax, or e-mail as required by Section 226.2 (definition of “notice”) in the regulations.

Date

Provider's Name

Provider's Street Address

City, State Zip Code

Dear [*Provider*]:

This letter concerns the [*date of Combined Notice*] letter that was sent to you by [*method of delivery*] and received on [*date*], which suspended your participation in the Child and Adult Care Food Program (CACFP). In that letter, we also proposed to terminate your CACFP agreement for cause and proposed to disqualify you from further CACFP participation. These actions were based on the determination in the [*date of Combined Notice*] letter (Serious Deficiency Notice) that you are seriously deficient in your operation of the CACFP.

You filed a timely appeal of the suspension, proposed termination, and proposed disqualification. On [*date of appeal official's decision*], the Administrative Review Official issued a decision on all of the appeals. In that decision, the suspension and both of the proposed actions were overturned.

SERIOUS DEFICIENCY DETERMINATION, SUSPENSION, PROPOSED TERMINATION, AND PROPOSED DISQUALIFICATION RESCINDED

As a result, we have rescinded the serious deficiency determination as of (the date of the Administrative Review Official's decision). We are also rescinding the suspension, the proposed termination of your agreement for cause, and your proposed disqualification as of the same date.

Any valid claims for reimbursement submitted by you for the period of the suspension will be paid. You must submit these claims by [*insert a date that will give the provider an appropriate length of time to submit these claims*].

Sincerely,

Sponsor Employee's Name and Title

cc: Nutrition Services Division, Program Integrity Unit

Attachment 1

APPEAL PROCEDURES FOR FAMILY DAY CARE HOMES

All day care home providers (hereinafter providers) who receive a notice of intent to terminate and disqualify participation in the Child and Adult Care Food Program (CACFP) for cause have the right to appeal that termination and disqualification and request an administrative review appeal. An appeal is a process by which an impartial hearing official reviews information provided by the CACFP Day Care Home Sponsoring Organization (SO) and the provider to determine if procedures were followed and were within the federal and state laws, regulations, policies, and procedures governing the CACFP. The procedure for an appeal follows.

Purpose

The CACFP appeal procedure allows providers participating in the program an avenue for appealing the action of Changing Tides Family Services.

A provider may appeal (request an administrative review) when Changing Tides Family Services:

1. Proposes termination of the provider's program participation
2. Proposes to disqualify the provider from future CACFP participation
3. Suspends the provider's agreement for program participation

Procedure

Notification, request, and procedure for hearing:

1. Whenever the Changing Tides Family Services takes action that will affect the participation of a provider in the CACFP, it will inform the provider in writing of the action and the grounds upon which its decision is based. Changing Tides Family Services will advise the provider of their right to appeal.
2. Upon receipt of the letter of proposed termination, the provider must submit to Changing Tides Family Services a written request for appeal postmarked no later than 15 calendar days from the date the notice of proposed termination was received by the provider. The original and one copy of the appeal request must be sent to Changing Tides Family Services via certified mail. The address is as follows:

Changing Tides Family Services
Attention: Donna Miller-Michaud
2259 Myrtle Ave.
Eureka, Ca. 95501

Changing Tides Family Services will forward the original copy of the appeal request to the hearing official via certified mail. The hearing official will

acknowledge receipt of the request for appeal to both the provider and Changing Tides Family Services within ten calendar days. This notice must be in writing.

3. The provider may refute the charges (show they are false) by providing written documentation to the hearing official. In order for the provider's request for an appeal to be considered, written documentation must be filed with the hearing official within ten calendar days of the request for appeal. Changing Tides Family Services will forward the information to the hearing official no later than five calendar days after the additional written documentation is filed with the Changing Tides Family Services. The hearing official will review only the written documentation/record unless there are extenuating circumstances, as defined by the hearing official. The provider may select to have a written review, written review with oral argument, or an oral hearing. The hearing official will set the time and place for the review of the provider records and Changing Tides Family Services' records, if there is an oral hearing.
4. In the case of an oral hearing, failure of the provider to appear at a scheduled hearing will forfeit the provider's right to appeal.
5. The provider may represent him/herself, may be represented by another person, or may retain legal counsel.
6. Any information on which the sponsor's action was based will be available to the provider for review. The hearing official will make copies of this information available to the provider, if necessary.
7. The hearing official will make a decision based solely on information provided by Changing Tides Family Services, the provider, and on program regulations, federal and state laws, and procedures governing the CACFP and sponsor provider agreement.
8. The provider, Changing Tides Family Services executive director, and the California Department of Education, Nutrition Services Division, must be notified in writing of the hearing official's final decision within 30 days from the date of receipt of the request for appeal.
9. The provider may continue to operate during an appeal of proposed termination unless there is evidence of eminent threat or danger to the health or welfare of the children.
10. Providers continuing to operate while appealing the proposed termination will be reimbursed for any eligible meals served during the period of the appeal.
11. During the period of the review by the hearing official, Changing Tides Family Services will not take action to collect or offset any overpayment noted in the termination letter.
12. The decision by the hearing official is the final administrative decision. There is no further opportunity to appeal to the California Department of Education.

13. If the provider loses the appeal, the termination date of the agreement is the date of the hearing official's decision.
14. The provider will be placed on the National Disqualified List of Providers for a period of seven years, or until such time that Changing Tides Family Services, in consultation with CDE, determines that the SDs have been corrected. However, if any debt relating to the SDs has not been repaid, they will remain on the list until the debt has been repaid.

Appeal Procedure—Notice of Suspension

Whenever Changing Tides Family Services suspends the participation of a provider for imminent threat to the safety or health of children, the provider must be notified both verbally and in writing that CACFP participation has been suspended; that the day care home is seriously deficient; and that the sponsoring organization proposes to terminate the provider's agreement for cause. The written notification must be sent by certified mail.

1. The notice must specify the serious deficiency(ies) found and state that the provider has the opportunity for an appeal of the proposed termination and disqualification from the CACFP.
2. The written notice must inform the provider that CACFP participation, including all payments, will remain suspended until the appeal is conducted.
3. The written notice must inform the provider that if the hearing official overturns the suspension, the provider may claim CACFP reimbursement for eligible meals served during the suspension.
4. The written notice must inform the provider that termination of the CACFP agreement will result in being listed on the National Disqualified List of Providers. The provider will remain on this list for a period of seven years or until such time that Changing Tides Family Services, in consultation with CDE, determines that the SD's have been corrected. However, if any debt relating to the SDs has not been repaid, they will remain on the list until the debt has been repaid.
5. The written notice must inform the provider that if (s)he seeks to voluntarily terminate the CACFP agreement after receiving the notice of proposed termination, the provider will still be considered terminated for cause and Changing Tides Family Services will propose to place the provider on the National Disqualified List of Providers.