



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

JAMES K. POLK
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

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www.tn.gov/humanservices

BILL LEE
GOVERNOR

DANIELLE W. BARNES
COMMISSIONER

February 11, 2020

Amber Adkerson, Owner
Creative Minds Learning Academy
1030 Maxwell Avenue
Nashville, Tennessee 37206-3554

Dear Ms. Adkerson,

The Department of Human Services (DHS) - Division of Audit Services staff conducted an unannounced on-site monitoring review of the Child and Adult Care Food Program (CACFP) at Creative Minds Learning Academy (Sponsor), Application Agreement number 00-232, on December 30, 2019. Additional information was requested and provided on January 3, 2020 and February 6, 2020. The purpose of this review was to determine if the Sponsor complied with the *Title 7 of the Code of Federal Regulations* (CFR) applicable parts, provider agreement, and applicable Federal and State regulations.

Based on our review of the Sponsor's records and information provided, the Sponsor had two feeding sites operating during the review period. The Creative Minds Learning Academy center was selected as the sample site.

Background

CACFP Sponsors utilize meal count sheets to record the number of breakfast, lunch, supper and supplement meals served. Meals served by participating Sponsors must meet the minimum guidelines set by the United States Department of Agriculture (USDA) and DHS to be eligible for reimbursement. The CACFP Sponsor reports the number of meals served through the DHS Tennessee Information Payment System (TIPS) for reimbursement.

We inspected meal counts sheets for our test period and reconciled the meals claimed to the meals reported as served for each meal service. We also assessed compliance with civil rights requirements. In addition, we observed a lunch meal service on November 26, 2019.

Our review of the Sponsor's records for November 2019 disclosed the following:

1. The Sponsor reported the number of participants in the paid category incorrectly

Condition

Based on our review of the Claim for Reimbursement for the test month, we noted the Sponsor reported 15 participants in the free category, zero participants in the reduced-price category, and 23 participants in the paid category. However, based on our review of the records available, we noted that there were 15 participants in the free category, zero participants in the reduced-priced category and 26 participants in the paid category. The difference noted was due to the three (3) participants enrolled and in attendance that were eligible for the paid category that were not reported.

There were 38 participants reported on the Claim for Reimbursement. However, based on our review of the Sponsor's records, we noted that there were 41 participants enrolled in the program.

As a result, the Sponsor underreported the number of participants in the paid category by three (3) participants. (See Exhibit)

This is a repeat finding from a previous report dated November 14, 2017.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.10(c) states, "... In submitting a Claim for Reimbursement, each institution shall certify that the claim is correct and that records are available to support that claim ..."

Title 7 of the Code of Federal Regulations, Section 226.17(b)(8) states, in part, "Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced-price meals in accordance with §226.23(e)(1). ..."

Recommendation

The Sponsor should maintain all information used to determine eligibility and ensure that each participant is classified and reported accurately based on categorical or income eligibility.

2. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals claimed for reimbursement

Condition

Based on the number of meals served with milk as a component, the Sponsor was required to purchase a total of 4,732 ounces of milk. However, the Sponsor could only document the purchase of 4,352 ounces of milk during the review period, resulting in a shortage of 380 ounces of milk.

The Sponsor did not maintain a monthly milk inventory but did have a receipt dated October 30, 2019, that contained 512 ounces of milk. On February 5, 2020, we requested menus and meal counts for October 31, 2019, and determined the number of ounces of milk required for those meals in order to identify how many ounces of milk could be applied to the November 2019 available milk. The remaining milk was credited to the milk available for the review period, resulting in a reduced shortage of 200 ounces of milk.

As a result, 50 supplements claimed for reimbursement were disallowed. (See Exhibit)

This is a repeat finding from a previous report dated November 14, 2017.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(4) states, "Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20..."

Title 7 of the Code of Federal Regulations, Section 226.20 (c)(1) states, in part, "Fluid milk, vegetables or fruit, or portions of both, and grains are required components of the breakfast meal."

Title 7 of the Code of Federal Regulations, Section 226.20(a)(1) states, "Fluid milk must be served as a beverage or on cereal, or a combination of both, as follows: (i) Children one year of age must be served unflavored whole milk. (ii) Children two through five years old must be served either unflavored low-fat (1 percent) or unflavored fat-free (skim) milk..."

Recommendation

The Sponsor should perform a month-end inventory for milk and maintain all receipts for food purchases to verify the required amount of milk was purchased and served.

3. The Sponsor provided a meal that did not meet the USDA meal pattern requirements during an observed meal

Condition

During our monitoring visit on November 26, 2019, we observed a lunch meal service, the meal served included Salisbury steak, chicken nuggets, creamed corn, pineapple and 1% milk. There was no bread or grain component served to the participants having Salisbury steak instead of chicken nuggets. Participants aged one and two years of age were not served milk with their meals.

As a result, 17 lunch meals claimed for reimbursement were disallowed. (See Exhibit)

This is a repeat finding from a previous report dated November 14, 2017.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(4) states, "Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20..."

Title 7 of the Code of Federal Regulations, Section 226.20(c)(2) states, "Fluid milk, meat and meat alternatives, vegetable, fruits, and grains are required components in the lunch and supper meals."

Recommendation

The Sponsor should ensure that menus meet the USDA meal pattern requirements.

4. The Sponsor provided menus that did not meet the USDA meal pattern requirements

Condition

Based on our review of the menus provided by the Sponsor for the test month, the menus provided did not meet the USDA meal pattern requirements. The menus provided had breakfast menus that contained grain-based desserts and a supplement menu that listed a cereal that contained more sugar than is allowable.

The breakfast menus containing a grain-based dessert are as follows:

Date	Menu
11/04/2019	Milk, applesauce, toaster strudel
11/11/2019	Milk, peaches, toaster strudel
11/19/2019	Milk, pineapples, toaster strudel
11/27/2019	Milk, peach slices, donut

Also, the Sponsor provided a supplement menu for November 13, 2019 that listed Cheerios (Honey Nut Cheerios), water, and yogurt. Honey Nut Cheerios contains 33 grams per sugar per 100 grams of dry cereal, which exceeds the maximum allowed sugar to be a creditable grain component.

The Sponsor was monitored for the review month of November 2019. The USDA implemented updated meal patterns October 1, 2017. The Sponsor had not been monitored since the meal patterns were updated and given the opportunity to receive technical assistance regarding this update. Meals were not disallowed for errors identified for non-compliance to the updated meal patterns.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.20(a)(4)(iii) states, "Grain-based desserts do not count towards meeting the grains requirement."

Title 7 of the Code of Federal Regulations, Section 226.20(a)(4)(ii) states, "... Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal) ..."

Recommendation

The Sponsor should ensure that all meals prepared meet the meal patterns established by the USDA and menus should be reviewed to ensure they contain all required meal components to be eligible as a reimbursable meal.

5. The Sponsor served meals outside of the approved serving time

Condition

During our monitoring visit on November 26, 2019, an observed lunch meal was served outside of the TIPS approved time. The observed meal service was from 10:15 am -11:00 am, but the TIPS approved meal service time was from 10:30 am -11:30 am. During our monitoring visit on

November 26, 2019 we arrived at 10:00 am. We observed the lunch meal service for the 1-2 years old children the meal was served at 10:15 am. Their meal consisted of chicken nuggets, creamed corn, and pineapples. No milk was served to the 1-2 years old children. Therefore, 11 lunch meals were disallowing due to not serving milk to the 1-2 years old children. The 3-5 years old children were served Salisbury steak, creamed corn, pineapples and milk. No grain components were served with the meals. Therefore, six (6) lunch meals were disallowing due to missing grain component. The meals disallowed were already disallowed in Finding 3 above.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.17(b)(4) states, "Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in §226.20...."

Recommendation

The Sponsor should ensure that meals are served during the approved feeding site time.

6. The Sponsor did not complete monitoring of its centers as required

Condition

According to the Sponsor application in TIPS, the Sponsor had two (2) centers in operation the review period. The Sponsor did not complete a pre-operational visit for The Learning Patch nor was any monitoring completed for either center since the additional center was in operation. The Sponsors approved application shows reimbursement for October 2019 through December 2019. The sponsor has failed to complete the required monitoring for any of the approved sites.

Criteria

Title 7 of the Code of Federal Regulations, Section 226.16(d)(4)(iii) states, "Sponsoring organizations must review each facility three times each year.... In addition: (A) At least two of the three reviews must be unannounced; (B) At least one unannounced review must include observation of a meal service; (C) At least one review must be made during each new facility's first four weeks of Program operations; and (D) Not more than six months may elapse between reviews."

Recommendation

The Sponsor should ensure that the required monitoring is completed timely.

Technical Assistance Provided

The Sponsor requested and received technical assistance during our monitoring visit on November 26, 2019 regarding USDA webinars, the USDA food buying guide, sugar limits for yogurt and cereal, and options for adding variety to the supplement menus.

Disallowed Meals Cost

Based on the review, we determined that the Sponsor's noncompliance with the applicable Federal and State regulations that govern the CACFP resulted in a total disallowed cost of \$127.50

Corrective Action

The Sponsor must complete the following actions within 30 days from the date of this report:

- Log into the Tennessee Information Payment System (TIPS) and revise the claim submitted for November 2019, which contains the verified claim data from the enclosed exhibits. ***Please note that, if the claim is revised***, TIPS will automatically deduct the overpayment from your next CACFP claim for reimbursement. **OR**
- If you are no longer participating in the CACFP program, remit a check payable to the ***Tennessee Department of Human Services*** in the amount noted in the report for recovery of the amounts disallowed in this report. ***Please return the attached billing notice with your check***; and
- Prepare and submit a corrective action plan to address the deficiencies identified in this report. The corrective action plan template is attached. Please return the corrective action plan to:

AuditServices.CAPS.DHS@tn.gov

If you have questions relative to the corrective action plan, please contact:

Allette Vayda, Director of Operations
Child and Adult Care Food Program
James K. Polk Building, 15th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Allette.Vayda@tn.gov
(615) 313-3769

Please note that the amount of disallowed cost is subject to an interest charge. The interest charge will be waived if your revised claim within 30 days from the date of this report. If the revised claim is not completed by the 30-day deadline, an interest charge may be billed to your institution. Please mail your check and the billing notice to:

Child and Adult Care Food Program
Fiscal Services
James K. Polk Building, 16th Floor
505 Deaderick Street
Nashville, Tennessee 37243

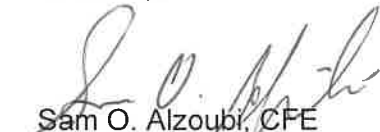
In accordance with the federal regulation found at *7 CFR Part 226.6 (k)*, your institution may appeal the amount of disallowed cost identified in this monitoring report. The procedures for submitting an appeal are enclosed. The appeal must be submitted to:

Tennessee Department of Human Services
Appeals and Hearings Division, Clerk's Office
P.O. Box 198996
Nashville, TN 37219

If the Institution decides to appeal the amount of disallowed administrative and meals cost, all appeal procedures must be followed as failure to do so may result in the denial of your request for an appeal.

We appreciate the assistance provided during this review. If you have any questions regarding this report, please contact Sean Baker, Audit Director 2, at 615-313-4727 or Sean.Baker@tn.gov.

Sincerely,



Sam O. Alzoubi, CFE
Director of Audit Services

Exhibit

cc: Cammillia Mays, Assistant Director, Creative Minds Learning Academy
Allette Vayda, Director of Operations, Child and Adult Care Food Programs
Debra Pasta, Program Manager, Child and Adult Care Food Program
Elke Moore, Administrative Services Assistant 3, Child and Adult Care Food Program
Constance Moore, Program Specialist, Child and Adult Care Food Program
Marty Widner, Program Specialist, Child and Adult Care Food Program
Comptroller of the Treasury, State of Tennessee

EXHIBIT

CACFP Sponsor of Affiliated Centers Program Data

Name of Agency: Creative Minds Learning Academy

Review Month/Year: November 2019

Total Meal Reimbursement Received: \$2,385.77

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Number of Centers	2	2
Total Days of CACFP Food Service	19	19
Total Attendance	902	901 ¹
Number of Breakfasts Served	606	606
Number of Lunches Served	671	654
Number of Supplements Served	715	665

¹The difference in the reported and verified is immaterial and was not included in this report as a finding

EXHIBIT

Sponsored Affiliated Center Program Data

Center: Creative Minds Learning Academy
Total Reimbursement: \$1,527.79

Program Area	Reported on Claim	Reconciled to Documentation
Total CACFP Food Service Days	19	19
Total Attendance	650	649 ¹
Percentage of Free or Reduced-price Category	39.47%	37%
Number of Participants in Free Category	15	15
Number of Participants in Reduced-Price Category	0	0
Number of Participants in Paid Category	23	26
Total Number of Participants	38	41
Number of Breakfasts Served	457	457
Number of Lunches Served	500	483
Number of Supplements Served	533	483

¹The difference in the reported and verified is immaterial and was not included in this report as a finding



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February 11, 2020

Amber Adkerson, Owner
Creative Minds Learning Academy
1030 Maxwell Avenue
Nashville, Tennessee 37206

Note: If you are no longer participating in the CACFP, remit a check payable to the Tennessee Department of Human Services in the amounts disallowed in this report to the address below. Please return the attached billing notice with your check.

If you continue to participating in the CACFP, log into the Tennessee Information Payment System (TIPS) and revise the claim submitted for November 2019, which contains the verified claim data from the enclosed exhibits.

Institution Name:	Creative Minds Learning Academy
Institution Address:	1030 Maxwell Avenue, Nashville, TN 37206
Agreement Numbers:	00-232
Amount Due:	\$127.50
Due Date:	March 12, 2020

Please remit a check or money order payable to the *Tennessee Department of Human Services* in the amount noted above by the due date to:

**Fiscal Services
James K. Polk Building, 16th Floor
505 Deaderick Street
Nashville, Tennessee 37243
Tennessee Department of Human Services**

Please note that the disallowed meals cost / overpayment of the CACFP is subject to an interest charge. The interest charge will be waived if the payment is received by the due date. If payment is not received by the end of 5th day of the due date, an interest charge may be added to the original amount due and will be billed to your entity.

If you have any questions regarding this notice, please feel free to contact Allette Vayda, Director of Operations at (615) 313-3769 or Allette.Vayda@tn.gov.

Thank you for your attention



Corrective Action Plan for Monitoring Findings

Instructions: Please print in ink or type the information to complete this document. Enter the date of birth for each Responsible Principal and/or Individual in Section B. Attach the additional documentation requested. Enter your name, title and date of signature on the last page. Please sign your name in ink.

Please return ALL pages of the completed Corrective Action Plan form.

Section A. Institution Information

Name of Sponsor/Agency/Site: Creative Minds Learning Academy	Agreement No. 00232	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
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Mailing Address: 1030 Maxwell Avenue, Nashville, TN 37206-3554

Section B. Responsible Principal(s) and/or Individual(s)

Name and Title: Amber Adkerson	Date of Birth: 09/07/1981
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Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan

Monitoring Report:	Corrective Action Plan:
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Section D. Findings

Findings:

1. The Sponsor reported the number of participants in the free, reduced-price, and paid categories incorrectly
2. The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals reported
3. The Sponsor provided a meal that did not meet USDA meal pattern requirements during an observed meal
4. The Sponsor provided menus that did not meet USDA meal pattern requirements
5. The Sponsor served meals outside of the approved serving time
6. The Sponsor did not complete monitoring as required

The following measures will be completed within **30 calendar days** of my institution's receipt of this corrective action plan:

Measure No. 1: The Sponsor reported the number of participants in the free, reduced-price, and paid categories incorrectly

DHS staff should check the "Forms" section of the intranet to ensure the use of current versions. Forms may not be altered without prior approval.

Distribution: OIG and CACFP/SFSP as appropriate

RDA: 2341

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

DHS staff should check the "Forms" section of the intranet to ensure the use of current versions. Forms may not be altered without prior approval.

Distribution: OIG and CACFP/SFSP as appropriate

RDA: 2341

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 2: The Sponsor did not provide documentation to support sufficient quantities of milk were purchased for all meals reported

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 3: The Sponsor provided a meal that did not meet USDA meal pattern requirements during an observed meal

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 4: The Sponsor provided menus that did not meet USDA meal pattern requirements

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 5: The Sponsor served meals outside of the approved serving time

The finding will be fully and permanently corrected.

DHS staff should check the "Forms" section of the intranet to ensure the use of current versions. Forms may not be altered without prior approval.

Distribution: OIG and CACFP/SFSP as appropriate

RDA: 2341

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

Measure No. 6: The Sponsor did not complete monitoring as required

The finding will be fully and permanently corrected.

Identify the name(s) and position title(s) of the employee(s) who will be responsible for ensuring that the finding is fully and permanently corrected:

Name:

Position Title:

Name:

Position Title:

Describe below the **step-by-step** procedures that will be implemented to correct the finding:

When will the procedures for addressing the finding be implemented? Provide a timeline below for implementing the procedures (i.e., will the procedures be done daily, weekly, monthly, or annually, and when will they begin?):

Where will the Corrective Action Plan documentation be retained? Please identify below:

How will new and current staff be informed of the new policies and procedures to address the finding (e.g., Handbook, training, etc.)? Please describe below:

I certify by my signature below that I am authorized by the institution to sign this document. As an authorized representative of the institution, I fully understand the corrective measures identified above and agree to fully implement these measures within the required time frame. I also understand that failure to fully and permanently correct the findings in my institution's CACFP or SFSP will result in its termination from the program, and the placement of the institution and its responsible principals on the National Disqualified List maintained by the U.S. Department of Agriculture.

Printed Name of Authorized Institution Official:

Position:

Signature of Authorized Institution Official: _____

Date: / /

APPEAL PROCEDURES FOR CHILD AND ADULT CARE INSTITUTIONS AND SPONSORING AGENCIES

Appeal Procedures

1. Pursuant to 7 CFR §226.6(k)(4), the TN Department of Human Services (TDHS) must provide administrative review procedures to institutions and responsible principals and responsible individuals as follows:

- (a) Annually to all institutions;
- (b) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an administrative review as described in 7 CFR §226.6(k)(2); and
- (c) Any other time upon request.

2. Pursuant to 7 CFR 226.6(k)(3) and (k)(9), some administrative actions are not subject to administrative review. Those actions are listed in paragraph 2.(a). Other administrative actions may be administratively appealed. Those actions are listed in paragraph 2.(b) and (c). All institutions and sponsoring agencies may appeal any adverse administrative action listed in paragraph 2.(b) which are taken by the TDHS by requesting a fair hearing to appear in person to refute the action, or by requesting a review of written information in lieu of a fair hearing.

(a) Pursuant to 7 CFR Part 226.6 (k)(3) TDHS is prohibited from offering administrative reviews of the following actions:

- (i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim.
- (ii) Determination of serious deficiency.
- (iii) State agency determination that corrective action is inadequate.
- (iv) Disqualification and placement on State agency list and National disqualified list.
- (v) Termination.
- (vi) State agency or FNS decision regarding removal from the National disqualified list.
- (vii) State agency's refusal to consider an application submitted by an institution or facility on the National disqualified list.

(b) Pursuant to 7 CFR Part 226.6(k)(9), an abbreviated appeal process is available for the following actions. TDHS must limit the administrative review to a review of written submissions by the TDHS and institutions or sponsoring agencies concerning the accuracy of the State agency's determination if the application was denied, or the State agency proposes to terminate the institution's agreement because:

- (viii) The information submitted on the application was false;
- (ix) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;
- (x) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program;

- (xi) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity;

(c) Administrative review is also available if the State agency notifies the institution and responsible principal or responsible individual of the following actions: proposed disqualification of a responsible principal or responsible individual, denial of a budget, denial of a line item within a budget, downward adjustment of the amount approved in a budget, suspension of an institution's participation, denial of start-up or expansion funds, denial of a request for advanced payment, recovery of an advance in excess of a claim, denial of a claim for reimbursement (except for late submission), decision not to forward an exception request for payment of a late claim, overpayment demand, denial of a new or renewing institution's application for participation, denial of sponsored facility application, notice of proposed termination, claim denial, claim deadline exceptions and requests for upward adjustments to a claim, or any other action affecting an institutions participation or claim for payment.

3. All appeal requests must be presented in writing to the TDHS Division of Appeals and Hearings not later than 15 calendar days after the date the institution or sponsoring agency receives the notice of adverse administrative action.

4. The date of an institution's or sponsoring agency's receipt of a notice of suspension and/or proposed termination and disqualification will be governed by the federal regulation at 7 CFR Part 226.2. The notice must specify the action being proposed or taken and the basis for the action, 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, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

5. The TDHS Division of Appeals and Hearings will acknowledge the receipt of the appeal request within 10 calendar days of the receipt of the institution's or sponsoring agency's request for review. The written request for review should state if a fair hearing is requested or if a review of written information in lieu of a fair hearing is requested. If the appeal request from the institution or sponsoring agency does not specifically request a hearing, a review of written information in lieu of a hearing will occur. If a fair hearing is requested and the institution or sponsoring agency's representative fails to appear, the right to a personal appearance is waived.

6. If an institution or sponsoring agency does not request a fair hearing or a review of written information in lieu of the hearing within 15 calendar days from the date the institution or sponsoring agency receives a Notice of Proposed Termination, the TDHS will issue a letter advising the institution or sponsoring agency that it is terminated from the CACFP effective on the 16th calendar day following the institution's or sponsoring agency's receipt of the notice, and that the responsible principals and individuals of the institution or sponsoring agency are disqualified from participation.

7. To be considered for a fair hearing or for a review of written information in lieu of a fair

Appeal Procedures for Child and Adult Care Food Program-Institutions
Revised March 2017

hearing, all written documents must be submitted to the TDHS Division of Appeals and Hearings not later than 30 days after receipt of the notice of adverse administrative action.

8. The action of the TDHS must remain in effect during the administrative review. The effect of this requirement on particular actions by TDHS is as follows:

(i) *Overpayment demand.* During the period of the administrative review, TDHS is prohibited from taking action to collect or offset the overpayment. However TDHS must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the TDHS's action.

(ii) *Recovery of advances.* During the administrative review, TDHS must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) *Program payments.* The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of 7 CFR §226.6.

9. The institution or sponsoring agency must refute the charges contained in the notice during the fair hearing or in the written information that is provided in lieu of the hearing.

10. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

11. If a fair hearing is requested, the institution or sponsoring agency will be notified in writing of the time, date and place of the fair hearing at least 10 calendar days in advance.

12. Any information which supports an adverse administrative action taken by the TDHS shall be available to the institution or sponsoring agency for inspection from the date of the receipt of the request for a fair hearing or a review of written information in lieu of the hearing.

13. In accordance with 7 CFR Part 226.6 (k)(8), the TDHS Division of Appeals and Hearings must conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the administrative review official's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

14. The procedures contained in the Uniform Administrative Procedures Act found at TCA 4-5-301 et seq. shall be followed in rendering a decision on all appeals. The decision of the hearing officer is the final administrative determination to be afforded to the institution or sponsoring agency, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the request for a fair hearing.

15. The processing limits for administrative appeals MUST be met. In the event a continuance is requested by a party, one continuance may be granted at the Hearing Official's discretion. This

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continuance shall not be for a period longer than ten (10) calendar days unless there are exceptional circumstances. Exceptional circumstances must be detailed in the order of continuance and the order must contain a date certain for the hearing, to be set as soon as possible. A report of pending CACFP desk review and fair hearing requests will be generated and reviewed daily by the Clerk's Office and the Legal Director for Appeals and Hearings who will monitor the dates for timeliness. In the event a decision has not been rendered within forty-five (45) calendar days of the date of receipt of the request for fair hearing or desk review, the Legal Director for Appeals and Hearings or their back-up shall notify the hearing official to take appropriate action.

16. All requests for a fair hearing or for a review of written information in lieu of a hearing must be submitted to:

Tennessee Department of Human Services
Division of Appeals and Hearings
PO Box 198996, Clerk's Office
Nashville, TN 37219-8996
Fax: (615) 248-7013 or (866) 355-6136
E-mail: AppealsClerksOffice.DHS@tn.gov

17. If a termination action is upheld by the hearing officer, the TDHS will issue a letter to the institution or sponsoring agency and its responsible principals and individuals advising that the termination and disqualification are effective on the date of the ruling issued by the hearing officer. The agency maintains searchable records of all administrative reviews and their dispositions for a period of five (5) years.

18. As required by 7 CFR Part 226.6 (c)(7), each disqualified institution, sponsoring agency, principal and individual will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, an institution, sponsoring agency, principal and individual shall remain on the list until such time as the USDA, in consultation with the TDHS, determines that the serious deficiencies that led to their placement on the list have been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the institution, sponsoring agency, principal or individual has failed to repay debts owed under the program, they will remain on the list until the debt has been paid.