



Memorandum

To: All Rising Phoenix Enrichment Program, Inc. Sponsored Centers

CC:

From: Sponsor's Executive Director, Ashley Johnson

Date: 12/1/2015

Re: Procedures for Sponsoring Organizations Terminating Childcare Centers participating in the Child and Adult Care Food Program Agreement

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

The purpose of this policy is to identify the minimum procedures sponsoring organizations must include in their policy and procedures for terminating the Child and Adult Care Food Program (CACFP) agreement with Child Care Center under their sponsorship. This policy specifically addresses the requirements of the serious deficiency process and the administrative review system sponsoring organizations must use when terminating for cause the program agreement of any of their Child Care Centers providers. This policy also addresses sponsoring organizations terminating for convenience program agreements.

Termination for cause- Child Care Centers declared Seriously Deficient

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

- Submission of false information and/or misrepresentation of information submitted on the application;
- Submission of false claims for reimbursement;
- Simultaneous participation under more than one sponsoring organization;
- Non-compliance with program meal pattern;

- Failure to keep required records;
- Failure of key staff to attend/participate in mandatory training;
- Conduct or conditions that threaten the health or safety of a child (ren) in care;
- A determination that the Child Care Centers provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity as defined by federal regulations and/or DECAL; or
- Any other non-performance under the sponsor-provider agreement, as specified by the sponsoring organization or the State Agency.

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

1. Written notice of serious deficiency that is sent to the Child Care Centers that the sponsor has determined the provider to be seriously deficient and that specifies the serious deficiency(-ies).

The sponsor must keep a copy of the notice on file and a copy must also be sent to DECAL. The notice must inform the provider of the action it must take to correct the deficiency (-ies), a reasonable time frame for correction (a maximum of 30 days), and that failure to fully and permanently correct the deficiency (-ies) within the timeframe will result in the sponsor issuing a notice of intent to terminate the provider's agreement. The notice of serious deficiency must also indicate that providers that are terminated for cause will be placed on the National disqualified list, which prevents the provider from participating in any of the United States Department of Agriculture's Nutrition programs.

2. Written Notice of Successful Corrective Action and Temporary Deferment if corrective action is satisfactory and the serious deficiency determination is temporarily deferred.

3. Written notice of intent to terminate that is sent only after the time given for corrective action has passed and/or the provider has not fully and permanently corrected the serious deficiency(-ies). This notice must:

- Inform the provider that it may request an administrative review of the proposed termination;
- Outline the procedures for seeking an administrative review;
- Inform the provider that, if termination for cause occurs, the provider's name will be placed on the National disqualified list; and
- Inform the provider that it may continue to participate in the program and receive reimbursement for eligible meals served during the administrative review.

If any serious deficiency involves imminent threat to the health and safety of a child or if an activity of a provider poses a threat to public health or safety, the sponsoring organization must issue the written notice of serious deficiency without giving time for correction and written notice of intent to terminate that immediately suspends program participation and payments. Providers may request an administrative review of the termination and suspension and, if they prevail, may seek retroactive reimbursement for eligible meals served during the suspension (See also Bright from the Start Policy Memorandum, "Health and Safety in the Child and Adult Care Food Program - Admin and DCH Sponsors," October 31, 2013).

4. Impartial and independent review official. The sponsoring organization must obtain a review official to conduct administrative reviews requested by providers. The review official

may be an employee of the sponsoring organization or any other person chosen by the sponsoring organization. In any event, the review official must not have been involved in the proposed termination and cannot have a direct personal or financial stake in the outcome of the review.

The sponsoring organization must make every reasonable attempt to ensure that the review official does not have a real or apparent conflict of interest that would affect the review official's judgment.

5. Written Notice of Termination or Written Notice of Corrective Action and Temporary Deferment depending upon the outcome of the administrative review.

Termination for convenience

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

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

The sponsor must provide written notice to the provider that it will terminate for convenience the agreement with the provider. The notice must indicate the effective date of the termination and a copy must be kept in the sponsor's records and a copy must also be submitted to DECAL.

Providers that are terminated for convenience may not request an administrative review but may seek to enter into an agreement with a different sponsor.

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

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

Step 1: Create a serious deficiency policy on terminating for cause the agreement with Child Care Centers providers. The policy should include, at a minimum, the elements mentioned in this policy. Additional requirements may be imposed in the policy, but the sponsoring organization's policy must at least: (a.) provide what the sponsor's staff considers in making the assessment of whether a problem rises to the level of a serious deficiency (i.e., repeat findings, frequency and severity of the problem, isolated vs. systemic non-compliance, degree to which problem/noncompliance will impact the integrity of the meals served and the funds used, etc.); (b.) determine the amount of time that should elapse between the sponsor's identification of a serious deficiency and its issuance of an SD Notice to the FDCH; (c.) determine who within the sponsoring organization has the authority to sign SD notices; (d) provide for written notice of serious deficiency, written notice of intent to terminate for cause, written notice of temporary deferment or written notice of termination, and that, if

requested, an independent and impartial official will conduct the administrative review; inform providers that their program agreements may also be terminated for convenience and provide examples of reasons for terminating for convenience.

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

- How Child Care Centers providers may request an administrative review (for instance, by submitting a written request for review to the sponsor) and the address of the person to whom the request should be submitted;
- That an independent/impartial officer will conduct the administrative review;
- The deadline for requesting the review. Child Care Centers providers should be given a reasonable amount of time (not less than fifteen (15) days) following the receipt of the notice of intent to terminate for cause to request an administrative review; and
- The consequence of not timely appealing the termination for cause, which would be that the Child Care Centers agreement would be terminated and the name of the Child Care Centers and the names of the person responsible for the CACFP would be added to the National Disqualified List.

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

Step 4: Send a copy of the following items to DECAL as they arise:

- A copy of each written notice of serious deficiency sent to Child Care Center's providers;
- A copy of each written notice of temporary deferment sent to Child Care Centers providers;
- A copy of each written notice of intent to terminate for cause sent to day care home providers;
- A copy of the decision of the review officer. Where no administrative review was timely requested or held, forward to DECAL a copy of the letter sent to the day care home provider indicating that its agreement has been terminated for cause and its name will be added by DECAL to the National disqualified list;
- If an administrative review is requested and the decision is in favor of the day care home provider, a copy of the notice of temporary deferment sent to the Child Care Centers provider;
- A copy of each written notice of termination for convenience sent to day care home providers; and
- A request for DECAL to place the Child Care Centers provider and it's responsible principals/individuals on the NDL (include the date of birth for each responsible principal/individual).