



**STATE OF TENNESSEE  
DEPARTMENT OF HUMAN SERVICES**

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

TELEPHONE: 615-313-4700 FAX: 615-741-4165  
TTY: 1-800-270-1349  
www.tn.gov/humanservices

**BILL LEE**  
GOVERNOR

**DANIELLE W. BARNES**  
COMMISSIONER

May 22, 2019

Mark Bierley, Executive Director  
La Petite Academy  
DBA: Learning Care Group  
21333 Haggerty Road  
Suite 100  
Novi, Michigan 48375-5004

Dear Mr. Bierley,

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 La Petite Academy, dba: Learning Care Group (Sponsor), Application Agreement number 00-374, beginning on April 8, 2019. Additional information was requested and provided on April 11, 2019. 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 13 feeding sites operating during the review period. **La Petite Academy 7460** and **La Petite Academy 7462** were selected as the sample sites.

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) to seek 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 at **La Petite Academy 7462** and a supplement service at **La Petite Academy 7460** on December 3, 2018.

Our review of the Sponsor's records for December 2018 disclosed the following:

**1. The Sponsor reported the number of participants in the free, reduced-price, and paid categories incorrectly**

Condition

***La Petite Academy 7460 – sample site***

Based on our review of the Claim for Reimbursement for the test month for **La Petite Academy 7460**, we noted the Sponsor reported 39 participants in the free category, 14 participants in the reduced-price category, and 50 participants in the paid category. However, based on our review of the records available, we noted there were 37 participants in the free category, 12 participants in the reduced-price category, and 54 participants in the paid category.

The differences were based on the following:

- There were three (3) participants reported in the free category that did not meet the income eligible requirements for this category. These participants were reclassified as paid.
- There was one (1) participant reported in the reduced-price category that did not meet the income eligible requirements for this category. This participant was reclassified as paid.
- There was one (1) participant reported in the paid category that was income eligible for the free category. This participant was reclassified as free.
- There was one (1) participant reported in the reduced-price category who did not have an application on file for the review period. This participant was reclassified as paid.

As a result, the Sponsor overreported two (2) free participants and two (2) reduced-price participants, and underreported four (4) participants in the paid category. (See Exhibit B)

***This is a repeat finding from a previous report dated March 30, 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 226.15(e)(2)* states, "All types of centers, except for emergency shelters and at-risk afterschool care centers, must maintain information used to determine eligibility for free or reduced-price meals in accordance with §226.23(e)(1). For child care centers, such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care."

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 incorrectly reported meal counts

### Condition

#### ***La Petite Academy 7460 – sample site***

Based on our review of the Claim for Reimbursement for **La Petite Academy 7460** for the test month, the Sponsor reported 1,076 breakfast meals, 1,296 lunch meals, and 1,210 supplements served. However, based on our review of available documents, we noted there were 1,076 breakfast meals, 1,288 lunch meals, and 1,221 supplements served, prior to any meal disallowances.

As a result, eight (8) lunch meals were overreported and 11 supplements were underreported. (See Exhibit B)

#### ***La Petite Academy 7462 – sample site***

Based on our review of the Claim for Reimbursement for **La Petite Academy 7462** for the test month, the Sponsor reported 1,163 breakfast meals, 1,290 lunch meals, and 1,548 supplements served. However, based on our review of available documents, we noted there were 1,174 breakfast meals, 1,294 lunch meals, and 1,553 supplements served, prior to any meal disallowances.

As a result, 11 breakfast meals, four (4) lunch meals, and five (5) supplements were underreported. (See Exhibit C)

### 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...."

### Recommendation

The Sponsor should ensure that claims for reimbursement are completed correctly and based on accurate supporting documents.

## 3. The Sponsor provided infant menus that did not meet USDA meal pattern requirements

### Condition

During our monitoring visit on April 11, 2019, we requested documentation and menus to support the Claim for Reimbursement for meals reported. The Sponsor provided menus for infant meals claimed for **La Petite Academy 7462TOH** and **La Petite Academy 7460** that were did not conform to the updated meal patterns for infants effective October 1, 2017. The menus provided appeared to meet the meal patterns approved prior to the revised meal patterns set by USDA, but failed to meet the requirements for all participants based on the updated meal patterns. The infant menus had deficiencies as follows:

- The menus separated infants into three categories: 0 – 3 months, 4 – 7 months, and 8 - 11 months. The updated meal patterns provide meal patterns for infants Birth – 5 months and 6 – 11 months.
- The menus provided for participants between the age of 5 and 6 months for breakfast and lunch meals did not report that at least 6 ounces of iron fortified formula, breastmilk, or a combination of both were served.
- The menus provided for participants between the age of 5 and 6 months for breakfasts that were missing a vegetable, fruit, or portions of both.
- The menus provided for participants between the age of 5 and 6 months for supplements that were missing the bread, cracker, or infant cereal component.
- There were menus provided for participants between the age of six months and 11 months for supplements that were missing a vegetable, fruit, or portions of both.

Due to the updated CACFP meal patterns requirements and emphasis on providing technical assistance during the implementation process, there were no meals disallowed.

### 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(b)(4)(i)* states, “Birth through 5 months. (A) Breakfast. Four to 6 ounces of breastmilk or iron-fortified infant formula, or portions of both. (B) Lunch or supper. Four to 6 ounces of breastmilk or iron-fortified infant formula, or portions of both. (C) Snack. Four to 6 ounces of breastmilk or iron-fortified infant formula, or portions of both. (ii) 6 through 11 months. Breastmilk or iron-fortified formula, or portions of both, is required. Meals are reimbursable when institutions and facilities provide all the components in the meal pattern that the infant is developmentally ready to accept. (A) Breakfast, lunch, or supper. Six to 8 fluid ounces of breastmilk or iron-fortified infant formula, or portions of both; and 0 to 4 tablespoons of iron-fortified dry infant cereal, meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0 to 2 ounces (weight) of cheese; or 0 to 4 ounces (volume) of cottage cheese; or 0 to 4 ounces of yogurt; and 0 to 2 tablespoons of vegetable, fruit, or portions of both. Fruit juices and vegetable juices must not be served. (B) Snack. Two to 4 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 1/2 slice bread; or 0-2 crackers; or 0-4 tablespoons infant cereal or ready-to-eat cereals; and 0 to 2 tablespoons of vegetable or fruit, or portions of both. Fruit juices and vegetable juices must not be served. A serving of grains must be whole grain-rich, enriched meal, or enriched flour.”

*Title 7 of the Code of Federal Regulations, Section 226.14(b)* states, “In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of §226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.”

### Recommendation

The Sponsor will ensure that all infant menus are complete and include all required components for each day the child was present.

#### 4. The Sponsor did not provide enrollment information for participants

##### Condition

##### ***La Petite Academy 7462 – sample site***

During our monitoring visit at **La Petite Academy 7462** on April 8, 2019, enrollment information was not on file for three participants.

***This is a repeat finding from a previous report dated March 30, 2017.***

##### Criteria

*Title 7 of the Code of Federal Regulations, Section 226.17(b)(8) states, “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). ...”*

The USDA policy memorandum, CACFP 15-2013 Existing Flexibilities in the Child and Adult Care Food Program states, “CACFP regulations require that institutions maintain documentation for participants enrolled to receive care [7 CFR 226.15(e)(2) and (e)(3)]. Documentation of participant’s enrollment must include information on normal days and hours of care and the meals the participant normally receives while in care....”

##### Recommendation

The Sponsor should ensure that all enrollment information is collected as required and updated annually.

**Note:** Our observation of meal services at the sample sites on December 3, 2018 revealed no significant deficiencies.

#### **Technical Assistance Provided**

During our monitoring visit on April 11, 2019, the Sponsor requested technical assistance regarding the application process and the updated infant meal requirements. We provided technical assistance regarding these topics via email on April 22, 2019.

#### **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 \$217.56.

#### **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 December 2018, 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](mailto: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  
 15<sup>th</sup> Floor, James K. Polk Building  
 505 Deaderick Street  
 Nashville, Tennessee 37243  
[Allette.Vayda@tn.gov](mailto: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, 16<sup>th</sup> Floor  
 James K. Polk Building  
 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](mailto:Sean.Baker@tn.gov).

\*\*\*

Sincerely,

*Sam O. Alzoubi*

Sam O. Alzoubi, CFE  
Director of Audit Services

Exhibits

cc: Chanel Miller, CACFP Coordinator, La Petite 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 A**

**CACFP Sponsor of Affiliated Centers Program Data**

**Name of Agency: La Petite Academy**  
**Review Month/Year: December 2018**  
**Total Meal Reimbursement Received: \$51,934.90**

<b>Site Meal Service Reconciliation and Monitor Activity</b>	<b>Reported on Claim</b>	<b>Reconciled to Documentation</b>
Total Days of CACFP Food Service	19	19
Number of Centers	13	13
Number of Breakfasts Served	12,183	12,194
Number of Lunches Served	14,433	14,429
Number of Supplements Served	15,988	16,004

## Exhibit B

### Affiliated Center Site Data

Site: La Petite Academy 7460

Total Reimbursement: \$4,279.74

Site Meal Service Reconciliation and Monitor Activity	Reported on Claim	Reconciled to Documentation
Total Days of CACFP Food Service	19	19
Total Attendance	1473	1,472 <sup>1</sup>
Percentage of Free or Reduced-price Category	51%	48%
Number of Breakfast Served	1,076	1,076
Number of Lunch Served	1,296	1,288
Number of Supplements Served	1,210	1,221
Number of Free Participants	39	37
Number of Reduced-Price Participants	14	12
Number of Paid Participants	50	54
Total Number of Participants	103	103
Total Amount of Food Cost	XXXXXXXX	\$3,940.45
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$5,379.00

<sup>1</sup>The difference in the reported and verified number is immaterial and was not included in this report as a finding



**Exhibit C**

**Affiliated Center Site Data**

**Site: La Petite Academy 7462**

**Total Reimbursement: \$3,814.59**

<b>Site Meal Service Reconciliation and Monitor Activity</b>	<b>Reported on Claim</b>	<b>Reconciled to Documentation</b>
Total Days of CACFP Food Service	19	19
Total Attendance	1,660	1,664 <sup>1</sup>
Percentage of Free or Reduced-price Category	39%	39%
Number of Breakfast Served	1,163	1,174
Number of Lunch Served	1,290	1,294
Number of Supplements Served	1,548	1,553
Number of Free Participants	39	39
Number of Reduced-Price Participants	8	8
Number of Paid Participants	71	71
Total Number of Participants	118	118
Total Amount of Food Cost	XXXXXXXX	\$2,966.52
Total Amount of Eligible Food and Non-Food Costs	XXXXXXXX	\$3,692.66

<sup>1</sup>The difference in the reported and verified number is immaterial and was not included in this report as a finding.



**STATE OF TENNESSEE  
DEPARTMENT OF HUMAN SERVICES**

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

TELEPHONE: 615-313-4700 FAX: 615-741-4165  
TTY: 1-800-270-1349  
www.tn.gov/humanservices

**BILL LEE**  
GOVERNOR

**DANIELLE W. BARNES**  
COMMISSIONER

May 22, 2019

Mark Bierley, Executive Director  
La Petite Academy  
Learning Care Group 21333 Haggerty Road, Suite100  
Novi, Michigan 48375-5004

**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 December 2018, which contains the verified claim data from the enclosed exhibits.

Institution Name:	La Petite Academy
Institution Address:	Learning Care Group 21333 Haggerty Road, Suite100 Novi, Michigan 48375-5004
Agreement Numbers:	00-374
Amount Due:	\$217.56
Due Date:	<b>June 24, 2019</b>

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 16th Floor  
James K. Polk Building  
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](mailto: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: La Petite Academy dba Learning Care Group	Agreement No. 00374	<input type="checkbox"/> SFSP <input checked="" type="checkbox"/> CACFP
Mailing Address: 21333 Haggerty Road Suite100 Novi, Michigan 48375-5004		

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

Name and Title: Mark Bierley, Executive Director	Date of Birth: / /
--	--------------------

## Section C. Dates of Issuance of Monitoring Report/Corrective Action Plan

Monitoring Report: 5/22/2019	Corrective Action Plan: 5/22/2019
------------------------------	-----------------------------------

## Section D. Findings

Findings:

1. The Sponsor reported the number of participants in the free, reduced-price, and paid categories incorrectly
2. The Sponsor incorrectly reported meal counts
3. The Sponsor provided infant menus that did not meet USDA meal pattern requirements
4. The Sponsor did not provide enrollment information for participants

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**

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.2: The Sponsor incorrectly reported meal counts**

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 infant 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. 4: The Sponsor did not provide enrollment information for participants**

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: / /  
Signature of Authorized TDHS 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 16<sup>th</sup> 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

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

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](mailto: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.