

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DHR 10088

<p>Sugar &amp; Spice Child Enrichment Center, Inc., Petitioner,</p> <p>v.</p> <p>N.C. Dept Of Health And Human Serv., Div. of Public Health, Child &amp; Adult Care Food Program, Respondent.</p>	<p><b>FINAL DECISION ORDER OF DISMISSAL</b></p>
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This matter is before the undersigned on Respondent's *Motion for Summary Judgment* filed January 14, 2016, and Petitioner's *Response to Respondent's Motion for Summary Judgment and Renewed Motion to Stay*, filed January 27, 2016.

The following pertinent undisputed facts appear in the documents submitted by the parties, and are generally supported by Respondent's *Affidavit of Arnett Cowan*.

The Respondent Department's Division of Public Health and its Special Nutritional Programs Unit administering the Child and Adult Care Food Program (hereinafter, "CACFP") addressed a "Notice of Serious Deficiency, Suspension, Proposed Termination and Proposed Disqualification" to the Petitioner on December 8, 2015 in reaction to receipt of the "Notice of Administrative Action (Revocation of License)," dated December 3, 2015, issued to Petitioner from the Division of Child Development and Early Education ("DCDEE") "due to violation of child care requirements regarding safety, which resulted in a substantiation of child abuse or neglect." Based on DCDEE's Notice, and its description of a "serious deficiency," in the nature of an "imminent threat to the health or safety of CACFP participants" (i.e., children at Petitioner's day care center), Respondent declared the "suspension of CACFP participation, including all Program payments, [to] take effect on the date of this letter."

The day care operator filed the present Petition to contest this decision on December 29, 2015, accompanied by a *Motion to Stay* CACFP's action. The motion to stay was denied on January 12, 2016 for lack of the verification required by N.C. Gen. Stat. § 1A-1, Rule 65(b). Petitioner also filed a contested case (15 DHR 10161) challenging DCDEE's determination.

The "Child and Adult Care Food Program" is governed by 7 C.F.R. § 226.1 - 226.27, and § 226.6, "State agency administrative responsibilities," includes the following instructions for the "State agency" operating the program, which in this instance is the Respondent:

(5) *Suspension of an institution's participation.* A State agency is prohibited from suspending an institution's participation (including all Program payments) except for the reasons set forth in this paragraph (c)(5).

(i) *Public health or safety—(A) General.* **If State or local health or licensing officials have cited an institution for serious health or safety violations, the State agency must immediately suspend the institution's Program participation, initiate action to terminate the institution's agreement, and initiate action to disqualify the institution and the responsible principals and responsible individuals prior to any formal action to revoke the institution's licensure or approval.** If the State agency determines that there is an **imminent threat to the health or safety** of participants at an institution, or that the institution has engaged in activities that threaten the public health or safety, **the State agency must immediately** notify the appropriate State or local licensing and health authorities and **take action that is consistent with the recommendations and requirements of those authorities.** An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the State agency must use the procedures in this paragraph (c)(5)(i) (instead of the procedures in paragraph (c)(3) of this section) to provide the institution notice of the suspension of participation, serious deficiency, proposed termination of the institution's agreement, and proposed disqualification of the responsible principals and responsible individuals.

7 C.F.R. § 226.6(c)(5)(i). (Emphasis added.)

It appearing from the undisputed facts that the actions taken by Respondent are mandated as a condition for provision of CACFP program benefits, the Movant is entitled to summary judgment as a matter of law, without prejudice to the Petitioner's right to contest the allegations relied on by DCDEE in 15 DHR 10161.

Consequently, Petition must be, and hereby is, DISMISSED.

### NOTICE

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46

describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 1st day of February, 2016.

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J Randolph Ward  
Administrative Law Judge