

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**GLAD MORNING COMMUNITY  
OUTREACH, INC.,  
Petitioner,**

v.

**GEORGIA DEPARTMENT OF EARLY  
CARE AND LEARNING,  
Respondent.**

:  
:  
: **Docket No.:**  
: **OSAH-DECAL-SFSP-1653326-31**  
: **Walker-Russell**



FILED  
OSAH

JUL 25 2016

Kevin Westray, Legal Assistant

**FINAL DECISION**

Appearances: For Petitioner: Robert L. Mack, Esq.  
For Respondent: Kori Woodard-Dickens, Esq., Legal Officer, Georgia  
Department of Early Care and Learning

**I. INTRODUCTION:**

Petitioner, Glad Morning Community Outreach, Inc. and its Responsible Principals and/or Responsible Individuals, appeal the decision of Bright from the Start; Georgia Department of Early Care and Learning (DECAL) to disqualify Petitioner from participation in the Summer Food Service Program ("SFSP"). A hearing was held on July 20, 2016.<sup>1</sup> The parties were provided an opportunity to present sworn testimony and documentary evidence at the hearing. For the reasons indicated below, Respondent's decision is **HEREBY AFFIRMED**.

**II. FINDINGS OF FACT:**

The Administrative Law Judge has carefully considered the entire available evidence, and based upon the preponderance of the relevant and credible evidence in this case, makes the following findings of fact:

1.

Respondent administers the federally funded Summer Food Service Program (SFSP) in the state of Georgia. The SFSP is a program in which DECAL provides reimbursement to approved sponsors who serve nutritious meals to participants during the summer at supervised sites. All approved sponsors must enter into a program agreement with DECAL. (Testimony of Sonja Adams).

<sup>1</sup> The record was held open until July 22, 2016, for the parties to submit a Proposed Order, including Findings of Fact and Conclusions of Law.

2.

The SFSP application requires all prospective sponsors to attend two (2) mandatory days of SFSP training. On April 15, 2015, Jennifer Taylor and Ingra Irvin attended the two (2) day training on behalf of Glad Morning Community Outreach, Inc (Glad Morning). The training gave a complete overview of the program and included topics related to maintaining records, financial management responsibilities, claims filing, allowable/unallowable costs, meal pattern requirements, procurement requirements and other sponsor responsibilities. (Testimony of Sonja Adams, Respondent's Exhibit 1).

3.

On April 19, 2015, Glad Morning, a private non-profit, submitted a SFSP application for FY2015, which listed the pertinent information regarding the program's operation including its organizational structure, approved budget amounts, program contacts, principals, and management plan. On June 1, 2015, Glad Morning was approved for participation in the SFSP with an effective operating period date of May 28, 2015 through August 8, 2015. Respondent set Glad Morning's store purchase budget in the amount of \$149,999.99. If Glad Morning exceeded its state approved store purchase budgeted, it would be required to engage in formal procurement with an open bidding process. In addition, Glad Morning was required to submit a revised budget request to DECAL to change the approved budget amount. (Testimony of Sonja Adams, Testimony of Falita Flowers, Respondent's Exhibits 4 and 5).

4.

Arthur Powell, CEO of Glad Morning, submitted a Delegation of Authority Form listing Jennifer Taylor as the program contact for Glad Morning and granting Jennifer Taylor authority to act on behalf of the organization in the operation of the SFSP. (Testimony of Sonja Adams, Respondent's Exhibit 2 & 5).

5.

As a condition of approval of its SFSP application, Glad Morning entered into a program agreement with DECAL. Pursuant to this agreement, Glad Morning accepted final financial and administrative responsibility for management of the program and agreed to comply with SFSP regulations, instructions or procedures under 7 C.F.R. § 225, as well as the SFSP policies and guidelines. (Testimony of Sonja Adams, Respondent's Exhibit 3).

6.

Respondent conducted a compliance review after Glad Morning began participating in the SFSP. All initial compliance reviews have a second party other than the lead reviewer review the initial review for accuracy to determine whether all Department policies and procedures were followed. Glad Morning's review consisted of a site review in June 2015 and a second party sponsor review in July 2015. Luetricia Billingsley conducted the initial site review and Compliance Manager, Kay Mayfield, conducted the second party review. The site review findings were acknowledged and signed by Petitioner on August 11, 2015. Petitioner did not appeal the findings of the June 2015 site review. (Testimony of Kay Mayfield, Compliance Manager for DECAL; Respondent's Exhibit 19).

7.

Kay Mayfield conducted the second party review in which there were revisions to the original review. The revised findings report was issued on November 13, 2015, and contained the following eight (8) findings:

- 1: Insufficient Milk Receipts
- 2: Incorrect or lack of meal count consolidation
- 3: Inadequate Site Monitoring
- 4: Inadequate delivery receipts
- 5: Sponsor did not comply with procurement rules and regulations/disallowed costs<sup>2</sup>
- 6: Untrained site supervisor/no training documentation
- 7: Using altered documentation to support claim/costs, and
- 8: Claiming meals not served to participants. (Testimony of Kay Mayfield, Compliance Manager for DECAL; Respondent's Exhibit 6, page 149).

8.

The second party review determined that Petitioner exceeded its \$149,999.99 budget for store purchases. If Sponsors spend \$150,000 or greater in store purchases, they are required to go through a formal procurement process. During the review, Respondent determined that Petitioner's actual amount of store purchases was \$215,393.45. Since this amount exceeded Petitioner's approved budget of \$149,999.99, and formal procurement procedures were not followed, Respondent disallowed \$65,393.46, which was the amount that Petitioner spent in excess of its approved budget. Petitioner was required to repay the \$65,393.46 to the SFSP with non-SFSP funds. Petitioner did not appeal the adverse actions from the July 2015 revised finding report.<sup>3</sup> (Testimony of Kay Mayfield, Respondent's Exhibit 6, pages 152 and 154).

9.

Upon finalization of the second review, Kay Mayfield recommended to the Audits and Compliance Director that Petitioner is seriously deficient in the operation of the SFSP based on the severity of findings due to a 50% or higher error rate for the insufficient milk receipts and incorrect meal consolidation.<sup>4</sup> The Compliance Director approved the Serious Deficiency Recommendation Form and sent it to the Nutrition Division for approval. (Testimony of Kay Mayfield, Respondent's Exhibit 6, pages 144-145 and pages 489-490).

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<sup>2</sup> The corrective action for Finding No. 5, which is the subject matter of Petitioner's appeal, required Petitioner to repay \$65,393.46 to the SFSP account within five (5) business days and to provide proof of same to the consultant. (Exhibit 6, pg. 152).

<sup>3</sup> Petitioner does not have a separate bank account for the SFSP. Rather all funds for the SFSP are commingled with Petitioner's regular bank account. Said commingling of funds is not explicitly prohibited by any of Respondent's rules, policies, or regulations.

<sup>4</sup> Ms. Mayfield testified that the error rate for the number of meals reclaimed due to insufficient milk receipts was 72% and the error for the number of meals claimed over the maximum number of meals allowed at each site was 73%.

10.

Sonja Adams, Policy Administrator for the Nutrition Division, reviewed the serious deficiency recommendation from the Audits and Compliance Division. Ms. Adams agreed with the serious deficiency recommendation because of the severity of the findings, error rate, and disallowed costs. (Testimony of Sonja Adams, Respondent's Exhibit 6).

11.

On January 20, 2016, Respondent issued a Notice of Serious Deficiency to Glad Morning Community Outreach, Inc. and its Principals and/or Responsible Individuals in the Operation of the Summer Food Service Program. The serious deficiency designation was based on severe Program findings including Glad Morning's failure to maintain adequate records, adjust meal orders to conform to variations in the number of participating children, and demonstrate financial and administrative capability for Program operations pursuant to SFSP Program requirements. (Testimony of Sonja Adams, Respondent's Exhibit 8).

12.

In accordance with Federal Regulations 7 C.F.R. § 225.11(c) and SFSP Policy 04-15, Respondent requested corrective action by Glad Morning. The corrective action requested descriptions of Glad Morning's policies and procedures and required repayment of funds in the amount of \$438,122.93 for disallowed meals and \$65,393.46 for disallowed costs. Respondent notified Glad Morning that failure to comply with the corrective action(s) within the specified time frame would result in the issuance of a notice of proposed termination and proposed disqualification of Glad Morning Community Outreach, Inc. and its principals and/or responsible individuals, Jennifer L. Taylor and Arthur Powell, from future participation in the SFSP Program. The deadline to submit the corrective action was February 5, 2016. (Testimony of Sonja Adams, Respondent's Exhibit 8).

13.

Glad Morning submitted several corrective action plans and received two extensions after Respondent issued the January 20, 2016, notice. Glad Morning agreed to a repayment plan for the disallowed meals and disallowed costs. (Testimony of Sonja Adams, Respondent's Exhibit 10,11, 12, & 13).

14.

On April 22, 2016, Respondent issued a Second Notice of Collection that included a payment plan for the disallowed meals and disallowed costs. Respondent informed Glad Morning that it would recoup the \$438,122.93 in disallowed meals from Glad Morning's first FY 2016 SFSP reimbursement, contingent upon participation approval. In addition, the Second Notice of Collection stated that "funds in the amount of \$65,393.46 for disallowed costs are due back to Glad Morning Community Outreach, Inc.'s SFSP food service account. To satisfy this amount, Glad Morning Community Outreach, Inc. must submit documentation (i.e., bank deposit slips, bank statements, statement of bank transfers, etc.) verifying that the debt has been repaid to the food service account using non-SFSP funds. Verification of payment was due to DECAL on or before May 30, 2016. (Testimony of Sonja Adams, Respondent's Exhibit 14).

15.

Glad Morning failed to submit verification of the payment of \$65,393.46 disallowed costs to DECAL as requested by the May 30, 2016, deadline date. (Testimony of Sonja Adams).

16.

On June 29, 2016, DECAL received faxed documentation from Arthur Powell with a comment that the fax was documentation of deposits from Travelers Rest Missionary Baptist Church (Travelers Rest) bank account to Glad Morning Community Outreach's account. The fax cover page included the first page of a bank statement from August 2015 and the first page of a bank statement for July 2015 for Glad Morning. The pages had various deposits marked with the notation of "deposit from TRBC acct. to Glad Morning Community acct."<sup>5</sup> There was no other detail or documentation provided for the deposits. (Testimony of Sonja Adams, Respondent's Exhibit 15).

17.

Respondent determined that the faxed documentation was unacceptable corrective action because it did not verify that the deposits were made from non-SFSP funds and the noted deposits of \$55,575, did not total the required amount of \$65,393.46 in disallowed costs. (Testimony of Sonja Adams, Respondent's Exhibit 15).

18.

On July 1, 2016, Respondent issued a Notice of Proposed Disqualification of Glad Morning Community Outreach, Inc. and its Principals and/or Responsible Individuals in the Operation of the Summer Food Service Program. The notice again explained that Glad Morning was determined to be seriously deficient and acknowledged that, although corrective action plans were submitted, the corrective action was insufficient because the payment arrangement with DECAL was not honored. In addition, Glad Morning did not fully and permanently correct the serious deficiency within the allotted time resulting in Respondent issuing a notice of proposed termination and disqualification. (Testimony of Sonja Adams, Respondent's Exhibit 16).

19.

On July 12, 2016, Petitioner filed a request for a hearing. Later that day, Respondent conducted a conference call with Arthur Powell to discuss the proposed disqualification. Falita Flowers, Director of Nutrition Services, participated in the conference call in a routine procedure where Respondent receives an appeal and speaks with the organization to verify that they want to file an appeal. During the call, Petitioner asked why the previously submitted information was insufficient and was informed that it was not complete and did not total the amount of the disallowed costs. Petitioner indicated that there were additional records that would document that full payment was made. Falita Flowers agreed to look at this information but explained that Respondent needed a minimum of 12 months of complete bank statements for both Glad Morning and Travelers Rest. Ms. Flowers explained that because Petitioner referenced Travelers Rest as

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<sup>5</sup> The deposits of \$15,175.00, \$25,000, and \$15,400 totaled \$55,575.

contributing funds into the Glad Morning SFSP account, Respondent needed documentation of that funding to trace those funds. In addition, Respondent requested Petitioner's internal financial management tracking system or QuickBooks, cancelled checks, and bank ledgers. The information was due by noon on July 13, 2016. (Testimonies of Falita Flowers and Sonja Adams).

20.

Respondent needed the bank statements for both Glad Morning and Travelers Rest because Petitioner had indicated that Travelers Rest was the source of the funds in its SFSP account and it is important to verify the source of the funds to ensure that no SFSP money was used. (Testimonies of Sonja Adams, Falita Flowers, and Kay Mayfield; Respondent's Exhibit 17).

21.

Funds repaid to the food service account as a result of disallowed costs must remain in the food service account until the Sponsor operates another food service program and is approved to operate another food service program. The funds used to repay the food service account cannot be used for anything else. (Testimony of Sonja Adams).

22.

On July 13, 2016, Glad Morning submitted the following to Respondent: a Register Report for the Glad Morning account showing transactions from May 20, 2015 through July 12, 2016; deposit slips for seven deposits made to the Glad Morning between the time period of June 24, 2015 to August 3, 2015; and bank statements for Glad Morning for May 2015 through April 2016. The deposit slips did not contain copies of the checks that were actually deposited or information on what was deposited. The financial information was reviewed by Chris Linn, Financial Audit Manager. (Testimony of Chris Linn, Respondent's Exhibit 20).

23.

Chris Linn began his review of the financial documentation by identifying the corrective action criteria, indexing the documents, tracing the deposit receipts through the bank statements and register reports and analyzing the in-flows and out-flows on the bank statements. (Testimony of Chris Linn, Respondent's Exhibit 20).

24.

Chris Linn was able to identify that the deposits receipts went into the food service account but was unable to determine the source of the deposits or where the deposits originated. Glad Morning used a comingled account for its SFSP food account. While use of comingled accounts is not prohibited by SFSP regulations, it makes the tracking of SFSP funds from non-SFSP difficult to distinguish. The deposit receipts showed that money was deposited into the food service account but did not identify the source of the funds. (Testimony of Chris Linn, Respondent's Exhibit 20).

25.

Additionally, Chris Lin noticed some out flows of resources from the food service immediately after the deposits. There was a deposit for \$25,000 on June 24, 2015, and then check #949 was written out to Glad Morning on June 25, 2015, in the amount of \$15,000. A deposit was made for \$15,400 on July 1, 2015 and then check #956 was written out to Glad Morning on July 2, 2015, in the amount of \$15,400. Additionally, there was a deposit on August 3, 2015, and then check #994 was written out to Glad Morning Community Outreach on August 3, 2015. The bank statements also show a check written from the SFSP account to Travelers Rest on July 13, 2015, in the amount of \$25,000. (Testimony of Chris Linn, Respondent's Exhibit 20).

26.

Chris Linn also observed several errors on Glad Morning's register report, such as duplicate deposits that did not match the bank statements. Therefore, Mr. Linn found the register report unreliable. (Testimony of Chris Linn, Respondent's Exhibit 20).

27.

Glad Morning received approximately \$1,180,114.08 in SFSP funds with the first reimbursement starting on June 10, 2015. Based on the documentation provided, Chris Linn was unable to determine or identify the source of the deposits and could not verify that the repayment was made from non-SFSP funds as required by the corrective action. (Testimony of Chris Linn, Respondent's Exhibit 20).

28.

Based on the review by Chris Linn (DECAL's Audit Manager), Falita Flowers and Sonja Adams agreed that Petitioner had failed to meet the corrective action in regards to the repayment of the disallowed costs since Petitioner had failed to provide documentation to verify that disallowed costs in the amount of \$65,393.46 had been repaid with non-SFSP funds. To date, Petitioner still has not provided payment in the amount of \$65,393.46 to the SFSP account from non-SFSP funds. (Testimony of Sonja Adams, Testimony of Falita Flowers).

### III. CONCLUSIONS OF LAW

1.

Respondent bears the burden of proof in this matter. Ga. Comp R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of the evidence, Ga. Comp R. & Regs. r. 616-1-2-.21.

2.

Respondent is charged with administering the federally funded SFSP in the state of Georgia. O.C.G.A. § 20-1A-4(2). States receiving federal SFSP funds must agree to comply with all applicable federal laws and regulations and must enter into participation agreements with each sponsor.

3.

Pursuant to its agreement with Respondent, Petitioner is obligated to comply with SFSP regulations under 7 § C.F.R. 225 and any instructions or procedures issued in connection therewith. Petitioner accepted final financial and administrative responsibility for management of an effective program.

4.

Federal regulations require that a State Agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. 7 C.F.R. § 225.11(c). Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following: (1). Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations; (2). The submission of false information to the State agency; (3). Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph; and (4). Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

- (i) Noncompliance with the meal service time restrictions set forth at §225.16(c);
- (ii) Failure to maintain adequate records;
- (iii) Failure to adjust meal orders to conform to variations in the number of participating children;
- (iv) The simultaneous service of more than one meal to any child;
- (v) The claiming of Program payments for meals not served to participating children;
- (vi) Service of a significant number of meals which did not include required quantities of all meal components;
- (vii) Excessive instances of off-site meal consumption;
- (viii) Continued use of food service management companies that are in violation of health codes. 7 CFR § 225.11(C).

The infraction upon which Petitioner's disqualification is based is not specifically included on this list. However, the list is not exhaustive and appears to have a common theme that focuses on the safety and well-being of the children, as well as the misuse or improper use of funds provided to sponsors by State agencies. In addition, State policy requires that if timely corrective action is not taken to fully and permanently correct the serious deficiencies (including failing to adhere to an approved payment plan), and/or additional findings are cited, Respondent will notify the sponsor that it is terminating the sponsor's agreement and disqualifying the responsible principals and/or individuals. DECAL Policy SFSP 04-15).



5.

Respondent properly notified Petitioner that the sponsor had been determined to be seriously deficient and identified the responsible principals and/or individuals. The notice specified the following: the serious deficiencies; the actions to be taken to correct the serious deficiencies; the time allotted to correct the serious deficiencies; the serious deficiency was not subject to administrative review; that failure to fully and permanently correct the serious deficiency within the allotted timeframe will result in termination and disqualification, and the effect of voluntary termination. DECAL SFSP Policy 04-15.

6.

In this matter, Respondent has established by a preponderance of the evidence that Petitioner was seriously deficient in the operation of the SFSP due to severe Program findings involving its failure to maintain adequate records; failure to adjust meal orders to conform to variations in the number of participating children; and failure to demonstrate financial and administrative capability for Program operations pursuant to Program requirements.

7.

Petitioner argues that Respondent has failed to meet the minimally required procedures in its efforts to collect unearned payments from Petitioner pursuant to 7 CFR § 225.12(b). Upon careful review, I find Petitioner's argument to be unpersuasive. In this matter, Respondent properly provided Petitioner with notice and the opportunity to submit corrective action as required by the SFSP regulations. Petitioner submitted corrective action on March 4, 2016, and March 8, 2016, and requested an arrangement to repay funds due to DECAL. As part of the corrective action, Respondent approved a repayment agreement with Petitioner regarding repayment of funds in the amount of \$438,122.93 for disallowed meals and \$65,393.46 for disallowed costs. However, Petitioner has failed to meet its corrective action and did not fully and permanently correct the serious deficiency.

8.

Petitioner has failed to submit proper verification that the debt of \$65,393.46 has been repaid to the food service account with non-SFSP funds by the deadline date of May 30, 2016. Petitioner submitted the first page of two bank statements from June 2015 and July 2015 on June 29, 2016, showing various deposits with a notation that the deposits were from a Travelers Rest account. However, there were no other documents provided and Respondent was unable to verify that these deposits came from non-SFSP funds. In addition, the repaid disallowed costs of \$65,393.46 must remain in Glad Morning's food service account until it operates another SFSP child nutrition program. Based on the transactions reflected in Glad Morning's bank statement, Petitioner has not shown that the \$65,393.46 remained in the account and was not used for FY15 expenses.

9.

Petitioner submitted a Register Report for Glad Morning's account on July 13, 2016, showing transactions from May 20, 2015 through July 12, 2016; deposit slips for seven deposits made to the Glad Morning between the time period of June 24, 2015 to August 3, 2015; and bank statements for Glad Morning for May 2015 through April 2016. Although

there were deposits into Glad Morning's SFSP account in excess of \$65,393.46, Respondent was unable to confirm that these deposits did not come from non-SFSP funds as required by the corrective action.

10.

Petitioner received approximately \$1,180,144.08 in SFSP reimbursements. The bank statements for Glad Morning showed several large checks written out to Glad Morning and Traveler Rest. Without verification of the source of the deposits, Respondent was unable to confirm that non-SFSP funds were used. Although Respondent requested bank statements for Travelers Rest to trace the source of the deposits, Petitioner failed to submit them. Instead, Petitioner provided deposit slips that did not have any accompanying information, such as the deposited checks for Respondent to determine the source of the funds. Therefore, Petitioner has failed to meet its corrective action and did not fully and permanently correct the serious deficiency pursuant to the corrective action.

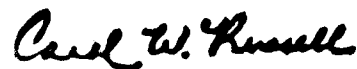
11.

In this matter, Petitioner has failed to fully and permanently correct its serious deficiencies. Accordingly, Respondent has met its burden and proved, by a preponderance of the evidence, that Petitioner should be disqualified from participation in the SFSP, and its responsible principals and individuals should be placed on the State Disqualified List.

#### IV. Decision

Based upon the foregoing, it is concluded that Respondent's decision to disqualify Glad Morning Community Outreach, Inc. and its Responsible Principals and/or Individuals, Jennifer Taylor and Arthur Powell, from participation in the Summer Food Service Program is **HEREBY AFFIRMED**.

**SO ORDERED**, July 25, 2016



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**CAROL WALKER-RUSSELL**  
**Administrative Law Judge**

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

GLAD MORNING OUTREACH INC,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-DECAL-SFSP-1653326-31-Walker-
	:	Russell
GEORGIA DEPARTMENT OF EARLY CARE AND	:	
LEARNING,	:	
Respondent.	:	Agency Reference No.: 1653326

**NOTICE OF FINAL DECISION**

This is the Final Decision of the Administrative Law Judge (Judge) in the case. This decision is not reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek judicial review of this decision by the superior court.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The motion must be filed within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing a petition for judicial review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH Clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: «ClerkFirst» «ClerkLast»  
225 Peachtree Street, NE, South Tower, Suite 400  
Atlanta, Georgia 30303-1534

**PETITION FOR JUDICIAL REVIEW**

A petition for judicial review must be filed within thirty days (30) after service of this Final Decision in the Superior Court of Fulton County or in the superior court of the county of the appealing party's residence unless the party is an out-of-state resident in which event, the petition must be filed in the Superior Court of Fulton County, Georgia. If reconsideration or rehearing is requested and granted, then a petition for judicial review must be filed within thirty (30) days after service of that decision. O.C.G.A. §§ 50-13-19 and 50-13-20.1. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the party maintains its principal place of doing business in the State of Georgia. A copy of the petition must be served simultaneously upon all parties of record and filed with the OSAH Clerk. OSAH Rule 616-1-2-.39.