

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

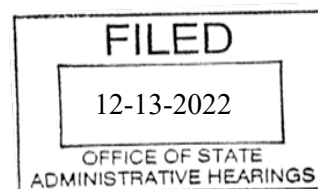
**SUNRISE GA., INC.,
Petitioner,**

v.

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

**Docket No.: 2308885
2308885-OSAH-DECAL-CAFP-67-Fry**

Agency Reference No.: 2308885



FINAL DECISION

I. INTRODUCTION

Petitioners, Sunrise Ga., Inc. and its Responsible Principals and/or Responsible Individuals (“Sunrise” or “Petitioner”), appealed the Georgia Department of Early Care and Learning’s (“DECAL” or “Respondent”) decision to terminate it and its responsible Principals and responsible Individuals from the Child and Adult Care Food Program (“CACFP”) and to place them on the National Disqualified List. A hearing was conducted on November 3, 2022, before the undersigned administrative law judge at the Office of State Administrative Hearings in Atlanta Georgia. Mr. Bosco Ikeakanam, Principal/Program Contact/Administrator and Mrs. Roseline Ikeakanam, Authorized Representative/Secretary appeared on behalf of Sunrise. Cynthia McCarthy, Esq. appeared on behalf of Respondent.

II. FINDINGS OF FACT

1.

DECAL is charged with administering the federal Child and Adult Care Food Program (“CACFP”) in the state of Georgia. The CACFP is a federally funded program whereby DECAL provides reimbursement to approved institutions who serve nutritious meals to participants in their care. (Testimony of Robyn Parham).

2.

All approved institutions must enter into a program agreement with DECAL. Pursuant to such an agreement, Petitioner agreed to accept final financial and administrative responsibility for management of the program and comply with CACFP regulations under 7 C.F.R. § 226 and

any instructions or procedures issued in conjunction therewith, and the CACFP policies and guidance of the Agency. CACFP institutions must comply with federal and state regulations and maintain adequate records to support monthly claims for meal reimbursement and other costs charged to the program. Institutions must ensure that only reasonable and allowable costs are charged to the CACFP, and CACFP related invoices and receipts must be maintained. Additionally, each center must designate, in its management plan, where records will be kept and maintain required records for the current year and the three prior years. (Testimony of Robyn Parham, Respondent's Exhibit R1).

3.

Sunrise began participating in CACFP in early 2016. The participation agreement was signed by Mr. Ikeakanam on November 19, 2015 and was accepted and signed by the DECAL Commissioner on January 4, 2016 (Testimony of Robyn Parham, Respondent's Exhibit R1).

4.

Three DECAL policies, pertinent here are Policy 02-18, concerning Recordkeeping Requirements, Policy 02-23, concerning Maintaining the integrity of [CACFP] Funds in a Separate or Commingled Account, and Policy 17-39, concerning Financial Recordkeeping in the [CACFP]. (Testimony of Robyn Parham, Respondent's Combined Exhibits, p 1875, p 1894, and p 1958).

5.

Under those policies, costs charged to the CACFP program must be reasonable, necessary, and beneficial. Unsupported costs are costs that lack the requisite documentation to show how the funds were expended. For example, a charge on a credit card for items without a corresponding itemized receipt showing the specific items purchased and the corresponding amounts. An unsupported cost is an unallowable cost due to the lack of support other unallowable costs can include items or costs not allowed by the program or incorrectly charged to the program. (Testimony of Robyn Parham).

6.

In March of 2020, Respondent completed a three-year Compliance Review of Petitioner. Angela Lowe completed the three-year review and Ms. Parham testified that she was Ms. Lowe's supervisor at the time. Ms. Lowe found several discrepancies, which are documented in

Respondent's Exhibits R4 and R7. The two most serious were documented as Serious Deficiencies on a Serious Deficiency Recommendation Form, which was issued on August 24, 2020. It was approved by Ms. Parham and later approved by the policy administrator, Aleisha Golden, on September 27, 2020, and finally approved by the Director on October 14, 2020. Both deficiencies involved improper financial management. The first, FC501: Using Funds for Unallowed Costs, reads as follows:

The Sponsor had unallowable costs due to unsupported credit card payments, unsupported funds transfers, and non-CACFP purchases made with CACFP funds, totaling \$44,413.19. After credit was given for verified CACFP purchases made with non-CACFP funds, \$18,787.90 of \$25,849.81 (73%) reported costs for November and December 2019 was deemed unallowable and due back to Sponsor's dedicated CACFP bank account. The Sponsor requested and was approved for a 12-month payment plan to refund the CACFP bank account.

The second, FC504: Institution/Facility does not maintain financial records to adequately track Program funds to identifiable from other revenue/ expenses, reads as follows:

The Institution's General Ledger (GL)/record management system was not well organized. The Examiner found the following discrepancies:

- Improper use of the CACFP Checking account (all CACFP funds in and out should be accounted for)
- Using multiple forms for payment (ex: American Express credit card, cash, general funds)
- Several unsupported transfers to the general account and American Express credit card payments that did not have supporting invoices/documentation.

(Respondent's Exhibit R5; Respondent's Combined Exhibits p 42. Testimony of Robyn Parham).

7.

After the Exit Conference for the three-year review which occurred on June 12, 2020, Ms. Lowe documented the corrective action to be taken for all violations including the two serious deficiencies.

The correct action for FC 504 reads as follows:

A well organized General Ledger has been put in place to ensure better organization of CACFP accounting records and also ensure that there are all [sic] CACFP funds are accounted for, that no multiple forms are used for payments and that there are no unsupported transfers to the general account and other non CACFP accounts. This will also be achieved by solely on relying on a separate CACFP account for all CACFP transactions, as we have now instituted.

Who - Bosco Ikeakanam

When - August 28th, 2020

(Respondent's Combined Exhibits p 1053).

The corrective action for FC 501 reads as follows:

Henceforth, our institution will make sure that only allowable items are purchase in pursuant to FNS Instruction 796-2 Rev.3. or obtain prior/specific prior approval to charge cost to CACFP and maintain copies of all receipts to support costs. The institution has refunded the unallowable cost to the CACFP account. Attached is the receipt for the \$1,565.14 unallowable cost for the months of November 2019 to December 2019. The refund was paid to the institution's CACFP account from the institution's General account. As for the additional \$17,222.76 unallowable cos, a payment plan has been approved for the Sponsor to pay it in one year. Beginning in September this year, we will pay \$1,4355.23 on the 15th of each month until it is paid off on the 15th of August 2021.

Who - The Director/Program contact, Mr. Bosco Ikeakanam will be responsible for ensuring that the Action Plan is implemented.

When - The corrective action will be implemented on June 19th 2020. The Action Plan for the refund of the \$17,222.76 unallowable cost will begin on September 15th 2020 and end on August 15th 2021.

(Respondent's Combined Exhibits p 1054).

8.

At the request of DECAL staff, on June 24, 2020, DECAL conducted a virtual technical assist visit. The purpose of the visit was to follow up with Petitioner on the deficiencies found during the three-year review and ensure that Petitioner had the tools and understanding to correct the deficiencies. The specific topics discussed were "Completing Required Forms," "Record Keeping Practices," "Monitoring Requirements and Tracking Systems," and "Best Practices for Financial Management." (Testimony of Robyn Parham; Respondent's Exhibit R23.)

9.

On March 11, 2021, DECAL issued a Notice of Serious Deficiency Sunrise and its Responsible Principals/Individuals in the Operation of the Child and Adult Care Food Program (CACFP). This notice stated that the designation was based on failure "to maintain adequate records, failure to perform any of the other financial and administrative responsibilities required, and other actions affecting the institution's ability to administer the Program in accordance with Program requirements pursuant to 7 CFR § 226.6(c)(3)(ii)." DECAL determined that the Mr. and Mrs. Ikeakanam "hold management positions within the institution pursuant to 7 CFR § 226.2 and are the principals responsible for the above-stated serious deficiencies." The Notice of

Serious Deficiency also confirmed the payment plan that was previously approved as noted in the June 12, 2020 Exit Conference Corrective Document Analysis (R7). Finally, the Notice states in bold type, **“The deadline date for your corrective action is March 26, 2021. The date of the corrective action response affirms the date implemented.”** (Respondent’s Exhibit 6, pp. 1-2, 4-5).

10.

Petitioner was required to submit a corrective action plan that fully and permanently corrected the serious deficiencies in accordance with Federal Regulations 7 C.F.R. § 226.6(c) and CACFP Policies 17-39, 02-18 and 02-23. Ms. Parham testified that the corrective action plan (“CAP”) for a serious deficiency is more comprehensive than the corrective action required after a compliance review. (Testimony of Ms. Parham, Respondent’s Exhibit R6, pp. 3-4).

11.

After a revision and an extension, DECAL accepted Petitioner’s corrective action plan. (Testimony of Ms. Parham, Respondent’s Exhibit 10-11). Sunrise submitted its initial Serious Deficiency Response with corrective actions on March 23, 2021 (R10) and submitted its Corrective Action Follow-up on April 14, 2021. Regarding FC 504, the corrective action prepared and submitted by Petitioner reads as follows:

A separate bank account has been established which is being used for the CACFP expenses and expenditures. Expenses that come out of the CACFP account will be supported by the required documentation as identified in the Budget guidance manual and the CACFP Policy 17/39. When funds are transferred to the general account, a notation will be made on both accounts regarding the amount and reason for the transfer. The Monthly Record of Cost form will be completed each month prior to the claim submission to identify how the reimbursement was used. All cost listed on the Monthly Record of Cost form will be supported by receipts, invoices and cancelled checks and other required supporting documents. The CACFP funds will not be used on any non-Program cost nor will it be used for Program cost that does not have supporting documentation.

(Respondent’s Exhibit R10, p 3).

Regarding FC 501, the corrective action prepared and submitted by Petitioner reads as follows:

Use budget guidance manual to determine if a cost is allowable,
Reconcile the monthly expenses to the approved budget and only use the reimbursement for cost that was approved in the Program budget, use the CACFP account solely for CACFP expenses. Ensure transfer of funds in and out of the CACFP account is clearly identifiable by notating the transactions on corresponding accounts.
Capture the monthly expenses on the Monthly record of cost form and ensure all

documented
cost is supported by the proper supporting documents.
Ensure that cost is reasonable and necessary by doing a cost analysis and
determining how the
cost will be used to support the CACFP.
Receipts will be reconciled to ensure unallowable purchases are appropriately
deducted from
the receipt prior to documenting cost on the Monthly Record of Cost form.

(Respondent's Exhibit R10, p 4).

12.

On April 22, 2021, DECAL issued a Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency in the Operation of the Child and Adult Care Food Program by Sunrise and its Principals and/or Responsible Individuals. (Testimony of Sonja Adams, Respondent's Exhibit 12). The Notice of Successful Corrective Action and Temporary Deferment informed Petitioner that "if DECAL finds in a subsequent follow-up review that any of the findings listed above have reoccurred, DECAL may immediately propose to terminate Sunrise Georgia, Inc. and/or disqualify the organization and its responsible principals and/or responsible individuals without any further opportunity for corrective action." The Notice of Corrective action also confirmed the payment plan that was previously approved as noted in the June 12, 2020 Exit Conference Corrective Document Analysis (R7). The Payment plan was to be completed by August 2021. (Testimony of Ms. Parham, Respondent's Exhibit R13).

13.

In April 2021, DECAL conducted a payment plan review and Ms. Lowe completed an Exit Conference Corrective Action Document Analysis on April 6, 2021. Ms. Lowe noted another FC 501 (using funds for unallowed costs) violation and described the violation as follows:

The Sponsor had unallowable costs due to items not approved in the budget, missing receipt, using an EBT card for food purchase, AMEX interest charges, and unsupported funds transfers. Therefore, this totals \$24,979.13 out of \$25,205.80 (99%) in unallowable costs for the review period. This finding is a catch-all of all unallowable cost found during the review and includes unallowable costs found upon reviewing bank statements and invoices/receipts. There were no unallowable cost to be refunded as the total of non CACFP funds used for allowable costs (\$38,094.53) exceeded the total unallowable costs (\$25,205.19). listed Petitioner's corrective action as follows:

Petitioner's corrective action for this deficiency reads as follows:

We will make sure that henceforth, total labor costs match the amount of transfers

from the CACFP account to the General account, and that the purpose of any transfers will be stated on the transfer note.

Who - Program contact, Mr. Bosco Ikeakanam

When - Action will begin 4/2021

(Respondent's Exhibit R8).

14.

On May 3, 2021, DECAL completed a second technical assist visit during which Recordkeeping Requirements contained in DECAL Policies 18 and 39 and Requirements for Separate and Comingled Accounts contained in DECAL Policy 23 were discussed. (Testimony of Ms. Parham; Respondent's Exhibit R-23

15.

On October 25, 2021, a serious deficiency follow-up review was conducted by Respondent's contractor, Myers and Stauffer, to confirm whether Sunrise had fully and permanently corrected all serious deficiencies from the March 11, 2021 Notice of Serious Deficiency. Upon the completion of review, seven (7) findings were cited, of which two were repeats of the serious deficiencies cited in the March 11, 2021, Notice of Serious Deficiency. In a Serious Deficiency Recommendation Form dated March 30, 2022, the reviewer recommended issuance of an Intent to Terminate (based on the previous Notice of Serious Deficiency). For repeat serious deficiency FC504, Ms. O'Shea noted that,

The Institution's record management system was not well organized. All CACFP funds in and out were not accounted for and were not supported with appropriate documentation. There were several unsupported transfers to the general account. A total of \$28,085.87 in transfers during April 2021 through October 2021 to cover expenses incurred during January 2021 through August 2021 were not supported with complete and accurate documentation. A notation was not made on either account regarding the amount and the reason for the transfer. A memo was added to the transaction receipts, but these were not always accurate. The program contact stated the transfers were for labor and administrative costs, but the memo only says labor. The transfers were not highlighted on any bank statements. In addition, a total of \$1,373.57 in purchases were disallowed. These purchases were not supported by receipts or invoices.

(Testimony of Ms. O'Shea; Respondent's Exhibit R14).

Additionally, Ms. O'Shea noted that Petitioner had not completed or fully implemented Petitioner's corrective action listed as completed in response to the April 22, 2021, Notice of Serious Deficiency that "A separate bank account has been established which is being used for the CACFP expenses and expenditures. Expenses that come out of the CACFP account will be

supported by the required documentation as identified in the Budget guidance manual and the CACFP Policy 17-39. When funds are transferred to the general account, a notation will be made on both accounts regarding the amount and reason for the transfer.” Regarding repeat serious violation FC 501 Using Funds for Unallowable Costs, Ms. Oshea noted that, “\$29,526.43 out of \$43,817.45 = 67% error rate for reported costs for March 2021 through August 2021. However, funds to be refunded were reduced to \$6,138.21 as the total of the non-CACFP funds used for allowable costs \$23,388.22 covered a portion of the unallowable costs \$29,526.43.” Myers and Stauffer also noted these repeat violations in the Exit Conference Corrective Action Document Analysis dated April 4, 2022. Ms. O’Shea testified that she requested documents for the period March through August 2021. She did not receive all documents requested. She started her review on October 25, 2021, and completed it on April 4, 2022. (Testimony of Kylie O’Shea, Respondent’s Exhibit R9, R14, Respondent’s Common Exhibits pp. 1058, 1063).

16.

On September 7, 2022, Respondent issued a Proposed Termination and Proposed Disqualification Notice to Sunrise and its Responsible Principals/ Responsible Individuals in the Operation of the Child and Adult Care Food Program (CACFP). The two serious repeat findings included: 1) the institution/facility not maintaining financial records to adequately track Program funds to be identifiable from other revenue/expenses under Finding Code 504; and 2) using funds for unallowable costs under Finding Code 501. Sunrise was also cited for FC811, inaccurate claim; FC2003, recordkeeping practices are not accurate; and FC901 sponsor does not meet all required pre-operational and monitoring/FTE requirements, all of which are repeat violations from the March 11, 2021 Notice of Serious Deficiency. Ms. Golden testified that given the payment plan, DECAL had both right and the obligation to review records during the period of the payment plan which by its terms was for the period September 2020 through August 2021. Petitioner timely appealed Respondent’s decision. (Testimony of Aleisha Golden, Respondent’s Exhibits R3, R15).

17.

At the hearing, Petitioner did not refute the core issues concerning faulty recordkeeping and the failure to complete the required documentation that was cited in the March 11, 2021 Notice

of Serious Deficiency and the September 7, 2022 Notice of Proposed Termination. While Petitioner tendered a receipt during the hearing that would have largely corrected the amount to be repaid that was cited in the September 7, 2022 Notice, the receipt was not timely submitted during the review and was not accepted or considered by the Court. Instead, Petitioner essentially argued that DECAL was bound by its statement that Petitioner had “fully and permanently corrected the serious deficiencies” as set forth in Respondent’s April 22, 2021 Notice of Corrective Action and Temporary Deferment based on its review of Petitioner’s corrective action documents submitted on March 23, 2021 and April 14, 2021. This argument was not persuasive for at least two reasons. First, DECAL’s statement was made with reference to Petitioner’s March 23 and April 14 submissions, which it had received less than a month before. Thus, the context of the statement shows only that provided Petitioner has implemented and continues to comply with its corrective actions, the deficiencies will be permanently fully and permanently corrected. The evidence showed that Petitioner failed to continue to comply and repeated the same errors. Second, until the serious deficiency follow-up review, DECAL had not had occasion to confirm that Petitioner’s proposed corrective actions had been completed or implemented despite Petitioner’s representation that the corrective action had been implemented. Even if implemented, the Petitioner must continue to comply with its corrective action in the future. Again, the evidence showed that Petitioner failed to continue to comply and repeated the same errors. Petitioner also argued that it did not have time to implement the corrective actions. This argument is also not persuasive because as noted in the March 11, 2021 Notice of Serious Deficiency Petitioner’s submission of the corrective action documents on March 23, 2021 and April 14, 2021, “**affirms the date implemented.**” (R6, p 5). Accordingly, by submitting the documents on March 23, 2021 and April 14, 2021, Petitioner represented that the corrective actions had been implemented and that it would continue to comply with its corrective actions in the future. Additionally, in the language quoted above in Finding of Fact ¶ 11 from R10, for example, states that the actions that Petitioner could complete had been completed and that future action “will” be conducted as represented. Since Petitioner represented that it had completed the corrective actions and would comply going forward, there was no need and no option for a period of time after March 23, 2021 and April 14, 2021 to fix the problems Petitioner represented were already fixed. The evidence demonstrates that Petitioner did not comply with the corrective action it represented had been completed and implemented. Finally, regarding the corrective actions for violation of FC 501 and

504, from the March 2020 review as documented in the Exit Conference Corrective Action Analysis completed on June 12, 2020 (R7), those corrective actions are crafted to address the same problems as the corrective actions for those violations as set forth in Petitioner's March and April 2021 submissions. *Compare* R-7, p 1053 and 1054 *with* R10, p 3, #2 and p 4, #4. Thus, Petitioner represented it had fixed those problems in June of 2020. Petitioner had ample notice and opportunity to fix the problems cited, failed to do so, and continued to make the same mistakes in recordkeeping.

18.

Petitioner also argued that Respondent re-reviewed documents from a time period that it had already reviewed and were from a time period prior to its serious deficiency corrective actions. While some of the documents reviewed for the 2021-22 review may have predated the March and April 2021 corrective action submissions, they do not predate the corrective action implemented in June 2020 in response to the 2020 review. (R7). Additionally, the issue with the repayment of funds from the 2020 review that led to the repayment plan for \$18,787.90 is entirely different from the 2021 review that revealed that \$6,138.21 needed to be repaid. Accepting that Petitioner paid the \$18,787.90,¹ according to the plan, it continued to make the same mistakes and created a separate obligation to repay \$6,138.21.

19.

III. CONCLUSIONS OF LAW

1.

DECAL 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.

The Department is charged with administering the federal CACFP in the state of Georgia. O.C.G.A. § 20-1A-4(2). In administering the program, the Department follows the regulations contained in the Code of Federal Regulations at 7 C.F.R. § 226.1-226.27, and must also consider memorandums issued by the United States Department of Agriculture ("U.S.D.A").

¹ According to the April 4, 2022, Exit Conference Corrective Action Analysis for the period of the repayment plan, Petitioner repaid all but \$.30. (R9, p 1063).

3.

One administrative responsibility the Department must meet in administering the CACFP is to “[e]nsure effective operation of the Program by participating institutions.” 7 C.F.R. §226.6(a)(5).

4.

To assist the Department in meeting its administrative responsibility, the Department has the right to make announced and unannounced reviews of participating institutions. 7 C.F.R. §226.6(b)(4)(v).

5.

Pursuant to its agreement with Respondent, Sunrise is obligated to comply with CACFP regulations under 7 § C.F.R. 226 and any instructions or procedures issued in connection therewith. Petitioner accepted final financial and administrative responsibility for management of a proper, efficient, and effective program. 7 C.F.R. §226.6(b)(4)(iv).

6.

If the Department, in reviewing an institution, finds that the institution is seriously deficient, the Department must notify the institution of the cited serious deficiencies. 7 C.F.R. §226.6(c)(3)(iii)(A). In this matter, the Department determined that Petitioner was seriously deficient, and the Department properly issued a Notice of Serious Deficiency that met the requirements of Section 226.6 of Title 7. (R6).

7.

Pursuant to the governing federal regulation, “seriously deficient” is the status of an institution or day care home that has been determined to be non-complaint in one or more aspects of its operation of the Program.” 7 C.F.R. § 226.2. In this case, Respondent determined that Petitioner was seriously deficient based on failure to maintain adequate records, failure to perform any of the other financial and administrative responsibilities required, and other actions affecting the institution's ability to administer the Program in accordance with Program requirements pursuant to 7 CFR § 226.6(c)(3)(ii). (R6).

8.

Each institution that participates in the CACFP is required to fully and permanently correct cited serious deficiencies. 7 C.F.R. § 226.6(c)(3)(iii)(A)(5). The failure to fully and

permanently correct serious deficiencies will result in a notice of intent to terminate and disqualify being issued against the institution and its responsible principals and/or responsible individuals. 7 C.F.R. § 226.6(c)(3)(iii)(C).

9.

The Department provided Petitioner an opportunity to submit a Corrective Action Plan (“CAP”) to fully and permanent correct the cited serious deficiencies (R10, R11), which was timely submitted and approved by the Department. (R13).

10.

On April 22, 2021, DECAL issued a Notice of Successful Corrective Action and Temporary Deferment of Serious Deficiency in the Operation of the Child and Adult Care Food Program by Sunrise and its Principals and/or Responsible Individuals. 7 C.F.R. §226.6(c)(3)(iii)(B). The Notice of Successful Corrective Action and Temporary Deferment informed Petitioner that “if DECAL finds in a subsequent follow-up review that any of the findings listed above have reoccurred, DECAL may immediately propose to terminate Sunrise Georgia, Inc. and/or disqualify the organization and its responsible principals and/or responsible individuals without any further opportunity for corrective action.” (R13).

11.

During the Seriously Deficient Follow-up Review conducted in December 2017, Petitioner was cited for two repeat findings that were previously identified as serious deficiencies: 1) Finding Code 504, [t]he institution/facility not maintain financial records to adequately track Program funds to be identifiable from other revenue/expenses and 2) Finding Code 510, using funds for unallowable costs. (R14). Sunrise was also cited for repeat findings FC811, FC2003 and FC901. (R6, R13 and R15).

12.

Pursuant to DECAL Policy 02-18, Recordkeeping Requirements for All Institutions Participating in CACFP, institutions are required to maintain all records relating to Program administration, financial responsibility and operation at the location indicated in their online application for the current year plus a period of three years after the date of submission of the final claim for the fiscal year to which they pertain. (Testimony of Aleisha Golden,). Institutions

are informed that failure to maintain or provide records could result in a meal reclaim or disallowed costs. (Testimony of Robyn Parham).

13.

Under DECAL Policy CACFP 17-39, Financial Recordkeeping in the CACFP, the most common financial recordkeeping requirements for institutions and sponsors include the following:

- Current, complete, and accurate financial records must be maintained;
- The records must support federal Program funds were used for its intended purpose;
- The records must support approved and allowable (reasonable and necessary) Program expenses;
- The records must support all food service operations are conducted principally for the benefit of enrolled participants, of which all of the Program reimbursement funds are used solely for the operation or improvement of that food service;
 - Financial tracking must include a separate Program bank account or chart of accounts; and
- Records must include, and are not limited to, source documents such as monthly record of cost forms, bank statements, canceled checks, general registries or ledgers, charts of accounts, contracts/agreements, purchase receipts and invoices;****

(Respondent's Common Exhibits p 1959-60).

14.

Regarding a separate CACFP account, DECAL Policy CACFP 17-39 stresses that “[s]imply opening a CACFP or SFSP bank account does not entirely satisfy DECAL's request to maintain a separate Program account. Institutions and sponsors must ensure once the Program account is established, all Program related transactions (debits and credits) must occur in this account and all Program accounting records and transactions must be segregated from all other non-Program accounts and activities. Any transfers that come from the designated Program account must be easily tracked back to the Program account and must be clearly noted in general registries, journal entries, ledgers and a chart of accounts.” (Testimony of Robyn Parham, Respondent's Common Exhibits p 1964).

15.

A “principal” is “any individual who holds a management position within, or is the officer

of, an institution or a sponsored center, including all members of the institutions board of directors or the sponsored center's board of directors." 7 C.F.R. § 226.2. A "responsible principal" or "responsible individual" is:

- (a) A principal, whether compensated or uncompensated, who the State agency or FNS determines to be responsible for an institution's serious deficiency;
- (b) Any other individual employed by, or under contract with, an institution or sponsored center, who the State agency or FNS determines to be responsible for an institution's serious deficiency; or
- (c) An uncompensated individual who the State agency or FNS determines to be responsible for an institution's serious deficiency.

7 C.F.R. § 226.2. Under the foregoing definition, both Mr. and Mrs. Ikeakanam are principals whom Respondent has determined to be responsible for Petitioner's serious deficiency.

16.

Despite the fact that there are numerous rules and regulations regarding the operation of the CACFP program, many of which are very complex, Petitioner's repeated failure to adhere to the two requirements for which it was cited under Finding Codes 501 and 504, and which form, in part, the basis for DECAL's request for termination, is not due to the complexity of the rules or of DECAL's expectations, or to the lack of technical assistance. Instead, the failure appears to be simply a failure to comply with the corrective actions Sunrise said it had implemented in June of 2020 and said it would comply with going forward. (R7, Respondent's Common Exhibits pp. 1053-54).

17.

The Department has shown by a preponderance of the evidence that Petitioner made unsupported transfers from its CACFP bank account during two separate review periods that resulted a repayment obligation. Petitioner failed to follow its own Corrective Action Plan that was implemented in March and April 2021 and failed to follow its corrective action plan implemented in June 202. Petitioner was afforded multiple opportunities to correct its failure to correct the two repeat deficiencies identified under Finding Codes 501 and 504 and to take a few simple steps to follow its Corrective Action Plans. Petitioner failed to do so.

18.

As noted above, Petitioner 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's participation in the CACFP should be terminated, and it and its responsible principals and individuals, Mr. Bosco Ikeakanam and Mrs. Roseline Ikeakanam should be placed on the National Disqualified List. 7 C.F.R. 226.6(c)(3)(iii)(C).²

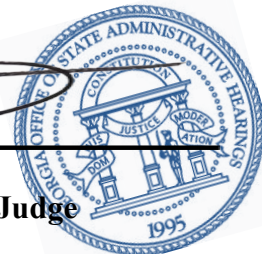
IV. Decision

For the above and foregoing reasons, Respondent's decision to terminate Sunrise GA, Inc.. d/b/a Kids Stay and Play, and its responsible principals Mr. Bosco Keakanam and Mrs. Roseline Ikeakanam from the CACFP and place them on the National Disqualified List is **AFFIRMED**.

SO ORDERED, this 13th day of December, 2022.



John Fry
Administrative Law Judge



² The Court recognizes and regrets the impact this will have on the children served by Sunrise. While it is an important consideration, repeat violations showing the mismanagement of federal funds, however, mandates this outcome.