

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. AGR 12215-13

AGENCY DKT. NO. 13-1-755

**NEW LIFE DEVELOPMENT  
CORPORATION,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF  
AGRICULTURE AND THE CHILD  
AND ADULT FOOD CARE PROGRAM,**

Respondent.

---

**Carmelo T. Torraca**, Esq., for petitioner (Copper Levenson, attorneys)

**Cheryl Clarke**, Deputy Attorney General, for respondent (John J. Hoffman,  
Acting Attorney General of New Jersey, attorney)

Record Closed: November 7, 2014

Decided: December 11, 2014

BEFORE **W. TODD MILLER**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, New Life Development Corporation (the NLDC, New Life or preschool) is a small non-profit corporation that operates a preschool adjunct to New Hope Baptist Church in Atlantic City, New Jersey. Volunteer parishioners form the majority of the school's staff, directors and board members. The NLDC has approximately sixty preschool students. Many of the children come from broken families in the immediate urban neighborhood. The preschool provides breakfast,

lunch and an afternoon snack. The preschool meals offer the best nutrition many of the children receive during the day, according to school staff.

The NLDC is and remains a participant in the New Jersey Department of Agriculture (NJDA) Child and Adult Care Food Program (CACFP or Program) since 2000. The CACFP program helps provides children with nutritious foods that contribute to their wellness, healthy growth, and development. The CACFP is a federally funded program administered by individual States.

On April 9, 2013, the NJDA notified the New Life of the results from its administrative review conducted on March 5, 2013. The review identified purported serious deficiencies and required the NLDC to take corrective action. The NLDC took significant steps to implement corrective action, including training for its staff and enlisting a new staff member with an MBA to help oversee its food operations (R-4; P-3).

On July 10, 2013, the NJDA notified New Life that it intended to terminate the preschool's eligibly for the CACFP program and place its board members on a national disqualification list until such time as the deficiencies are corrected, or if not corrected, for seven years (R-12).

An appeal was filed by the NLDC. The NLDC continues to be fully eligible for the CACFP program, pending this appeal. And the NLDC represented that it has made good faith ongoing improvements to its program, in effort to assuage the NJDA's concerns. New Life repeatedly and continuously requested the NJDA to return to the preschool to review the corrective actions taken. If the corrective action was adequate, the NJDA would have to temporarily defer its termination action.<sup>1</sup> The NJDA refused to return to New Life since issuing its July 10, 2013, Notice of Intent to Terminate, even though the regulations urge continued corrective action and reinstatement if the corrective action is successful. *Id.* (See also, R-1). And the NJDA refused to engage in settlement discussions in the interest of judicial and resource economy, fundamental fairness, assessment of litigation risk, mindful that ongoing corrective action was

---

<sup>1</sup> 7 C.F.R. § 226.6(c)(B) (Successful corrective action)

implemented by New Life in the interest of the attending children. The NJDA cites its internal policy of no settlements<sup>2</sup> (R-18K; Outcomes of the Serious Deficiency Process). Indeed, the Code of Federal Register does not authorize a “no settlement” position for all cases. This was merely an un-promulgated policy of the USDA.

### **PROCEDURAL HISTORY**

On August 28, 2013, the NJDA transmitted this matter to the Office of Administrative Law for a hearing as a contested matter, pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This case was vigorously contested resulting in a lengthy trial because of the national disqualification list ramifications for the board members. Hearings were held on the following dates: November 19, 2013, December 30, 2013; March 24, 27, 31, 2014; June 3, July 7, August 12, and 13, 2014. The record closed on November 7, 2014, after submissions of closing and supplemental research briefs.

---

<sup>2</sup> Public policy strongly favors settlement of litigation, including settlement of administrative cases, as a means of avoiding expenditure of time, effort, and expense by judges and parties. Consistent with this policy, N.J.S.A. 52:14B-9(d) states, "**Unless precluded by law**, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order." Settlements permit parties to resolve disputes on mutually acceptable terms rather than exposing themselves to the uncertainties of litigation. See Morris County Fair House. Council v. Boonton Township, 197 N.J. Super. 359, 366 (Law Div. 1984), aff'd, 209 N.J. Super. 108, 506 (App. Div. 1986). "Settlements also save parties litigation expenses and facilitate the administration of the courts by conserving judicial resources." Ibid. [emphasis added]

A broad sweeping internal policy of “no settlements” might need to be promulgated as explained in Metromedia, Inc., v. Dir. of Taxation, 97 N.J. 313 (1994).

## **SUMMARY OF THE MATERIAL FACTS**

### 2013 Administrative Review

By a letter, dated February 25, 2013, the NJDA notified New Life that it would be conducting an administrative review on March 5, 2013 (R-1). Included was an Administrative Review Checklist, which specifically identified each document to be reviewed, and a CACFP Administrative Pre-Review Fact Sheet which provided guidance for the review.

November 2012<sup>3</sup> was the review month chosen by the NJDA which was the period that Atlantic City was devastated by Superstorm Sandy (October 29, 2012). A state of emergency was declared. Atlantic City was evacuated and closed by order of the Governor for approximately one week. There was extensive media coverage and the storm recovery thereafter was slow and traumatic for all the impacted communities.

Kate Sheppard conducted the review of the preschool's November 2012 records and operations for the NJDA. Sheppard was a recent hire by the NJDA and was only employed for ten months. Sheppard holds a dietetic degree for the University of Delaware and a Master in Business from the Andrew Jackson School. Sheppard met with the Carolyn Farrar, Director of the NLDC during the review.

Sheppard utilized a preprinted review form and made contemporaneous notations during the audit. Sheppard summarized the purported deficiencies she observed in her audit report (R-2:12). They are: #10) missing documents; #11) eligibility applications not dated; #12) Twenty eligibility applications need to be resubmitted (re-determined); #15) missing attendance records; #21) over and under claims for meals; #22) missing meal components (e.g. protein or vegetable) #23) insufficient milk; #25) cost deficiency; #28) training not recorded; #30) posting of the civil rights poster (R-2:12).

---

<sup>3</sup> (R-1).

Sheppard testified that preschool's records were in poor order when she conducted her review. The NLDC was required<sup>4</sup> to maintain household size and income information for each participant. Twenty eligible applications for the month of November 2012 had deficiencies. One was "mis-determined", two were missing, fourteen were not dated and three were otherwise incomplete. The NLDC conceded twenty out of a total of about sixty applications had some errors and they would be placed in paid category. This provides the preschool with the lowest amount of reimbursement from the CACFP program until the errors were corrected. The NLDC agreed to fix the twenty eligibility applications at the start of 2013-2014 enrollment (September 1, 2013).

Every CACFP participant required to collect and maintain copies of invoices, receipts or other records.<sup>5</sup> The failure to maintain these records is grounds for the denial of reimbursement for meals served during the period. Sheppard found that only \$407.68 of the \$3,420.17 claimed for reimbursement was verified for program costs and additional receipts/invoices were unavailable (R-2, Administrative Review Form, pg. 8). A large number of milk receipts/invoices were unavailable for November 2012. The NLDC did not rebut the findings that some of records for the food purchase records were deficient for November 2012. The NLDC makes bulk purchases from vendors such as Sam's Club and Balford (R-1). But the invoices were not as orderly after the storm. The NLDC proposed and agreed to switch to outside vendors such as U.S. Foods or Balfour Farms for food and milk deliveries (R-4). An outside vendor would maintain competent records and invoices with copies also kept by the NLDC. More training was also provided and a new staff member with an MBA/tax preparation (Dianna Berry) was enlisted to help with the paper trail and record keeping requirements (P-3).

Each institution is required to collect and maintain daily records indicating the number of participants in attendance and the daily meal counts, by type (breakfast, lunch, and snacks). In submitting a claim for reimbursement, each institution certifies that the claim is correct and that records are available to support that claim.<sup>6</sup>

---

<sup>4</sup> 7 C.F.R. §226.23(e)(4).

<sup>5</sup> 7 C.F.R. §226.15(e)(6).

<sup>6</sup> 7 C.F.R. §226.10(c)(2).

Sheppard determined that the records for the month of November 2012 did not support NLDC claim for reimbursement. She found that some meals were recorded on days when participants were reported absent, participants were inadvertently marked present on weekends when the facility was closed (meals were claimed) and attendance records were missing on dates for two classrooms (meals were claimed). Sheppard found that incorrect eligibility classifications was recorded on the meal count record for several participants and meals claimed for one participant were listed on the meal count record twice. Sheppard found that some meals were “over claimed” by New Life: 529 breakfasts, 515 lunches and 492 snacks; and some meals were underclaimed by New Life: 257 breakfasts, 261 lunches and 271 snacks (R-2, Administrative Review Form, pg. 6).

New Life explained that the preschool uses an electronic card sign-in system. If sixty children signed in electronically, the director would use this figure as the number of children participating in the CACFP program for that day. The assumption was that all the children that signed in electronically would receive meals for the day. The electronic system seemed reliable and more efficient than performing head counts at each meal. Nevertheless, the NLDC agreed to perform head counts when each meal was distributed. More training was also provided and a new staff member with an MBA and tax preparation experience was enlisted to help with the meal head counts and other tasks.

All meals claimed for reimbursement must meet minimum United States Department of Agriculture (USDA) nutritional requirements.<sup>7</sup> Upon reviewing the daily menus for the month of November 2012, Sheppard found that most but not all of the meals met the minimum USDA requirements (R-2, Administrative Review Form, pg. 6). Sheppard found the following deficiencies: all food items/components were not specified on all menus (i.e. hula, stir fry, juices) and the menu did not reflect all components served daily; the menu was not posted in a visible location for participants and staff; substitutions/additions/deletions were not noted on all menus; and three breakfasts were missing the required fruit component; two breakfasts were missing the required

---

<sup>7</sup> 7 C.F.R. §226.20(a).

meat/meat alternative component; five lunches were missing the required fruit/vegetable component; and eight supplements (snacks) were missing one of the two required components.

The NDLC offered a variety of food choices. The evidence demonstrates that a typical New Life breakfast consisted of cereal, oatmeal, fruit, juice and/or milk. Lunch consisted of baked chicken or a sandwich, brown rice, green beans, sweat potatoes, carrots and a juice or milk. And the afternoon snack consisted of oatmeal cookies, celery boats, butter cookies, and a drink (R-10; R-11). The NLDC admitted that some of these meals did not strictly conform to the USDA food components requirements but that its food menu substantially complied with the program and provided the children with their best and most nutritious meals of the day. This was not a case where the preschoolers were significantly deprived their daily nutrition.

Each preschool is required to keep records of the annually required CACFP training. Sheppard found that, although all training had been completed by the NLDC, it was not adequately documented (R-2, Administrative Review Form, pg. 9). Indeed, the following required documents were available; Procurement Standards (provided by NJDA); Building for the Future Poster and Flier (provided by NJDA); "And Justice for All" Poster (provided by NJDA). The NLDC had in its possession eleven out of the twelve categories of required documents or stated differently, ninety-two percent of the required documents (R-2, Administrative Review Form, pg. 2).

Sheppard testified that New Life owed the NJDA an over claim in the amount of \$3,216.30 (R-2, NJCACFP-Administrative Review-Reimbursement Calculation, Attachment A). New Life did not appeal the determination of an overclaim. In fact, the NLDC agreed, to its detriment, to convert all of the contested participants to the lowest form of reimbursement and immediately refunded the \$3,216.30 to the program.

Sheppard testified that at the end of the review she provided technical assistance by going over each of the findings and details of the review with Farrar, thus notifying her immediately of the deficiencies and the need to take corrective action. Additionally, Farrar signed both the Administrative Review and the Site Review Forms.

On April 9, 2013, a Notice of Serious Deficiency<sup>8</sup> was issued declaring New Life seriously deficient in its compliance with the CACFP (R-3). New Life was directed to submit a corrective action plan with documentation demonstrating full and permanent implementation of corrective actions for identified program deficiencies within fifteen days - April 24, 2013 (R-3, pg. 10). The NLDC was advised that its failure to demonstrate full and permanent corrective action in compliance with the regulations could result in immediate proposal to terminate its CACFP participation and an additional overclaim to its sponsorship.

Cheryl Banks is Chairperson of the NLDC Board and was one of its primary witnesses. She is a parishioner of the church and has volunteered to help the preschool at the request of Reverend Howard. Banks is also a full-time employee with Atlantic City for over twenty-five years and holds other volunteer positions. Banks is concerned that her position and reputation will be stigmatized if she is placed on a national registry. As a full-time employee, she does not have the ability to be on-site at the preschool during the school day. Banks and the other board members are not invested in or owners of the preschool, but are merely community volunteers. Therefore, substantial reliance is placed upon the preschool director Carolyn Farrar and the school staff due the limitation associated with being a volunteer.

Chairperson Banks noted that the period under review was right after Superstorm Sandy. Banks ordered an emergency meeting of the board when the deficiency notice was received, mindful that all board members were facing placement on a Federal Government National Disqualification List. In preparation for the board meeting Banks downloaded and printed all of the NJDA and USDA information she could find online. She displayed a ten-inch binder of downloaded material she created, during her testimony. She delved into the regulations and became as familiar as she could with the program. Reverend Howard and Director Farrar were also at the meeting. The results of the meeting, in part, called for the director and staff to receive more training directly from the NJDA and to hire a new person to assist Farrar, even though Farrar

---

<sup>8</sup> 7 C.F.R. §226.6(c)(3),



had being adequately running the food program for numerous years. In the meantime, Farrar was directed to address the deficiencies as soon as practicable.

On April 22, 2013, Director Farrar submitted a detailed three-page corrective action plan (R-4). This submission was intended to be collaborative as a means for New Life to work through the deficiencies with the NJDA's guidance and assistance. The plan confirmed that more training would take place with the NJDA and the hiring of new personnel (R-4; P-3). The corrective action reflects that the board of directors took aggressive action, including requiring quarterly meetings with and quarterly reports from the director, on site visits by board members, more CACFP related training for staff, more involvement of Reverend Howard as an additional layer of supervision, use of outside vendors to improve food components and paper trail, creation of a new filing system, and updated eligibility forms for the next school year 2013-2014 (R-4; P-3).

On July 10, 2013, the NJDA rejected the corrective action plan submitted by NLDC primarily based upon a surprise visit conducted on June 4, 2013 (R-12). Sheppard conducted the June 4, 2013, review. However, primary elections were being held and some staff members worked at the polls. Director Farrar was absent due to a serious illness that lasted a few weeks. Sheppard was informed that the staff members most familiar with the new procedures were not present. Teaching staff member Paula Denson attempted to guide Sheppard through the corrective measures that were being implemented. But Denson was not very familiar with the CACFP program or the corrective action plan. Hence, the meeting was not productive and Sheppard solidified her opinion that the NLDC was not implementing a corrective action plan. Denson recalled the meeting started around 9:00 a.m. and Sheppard left around 9:40 a.m.

Banks explained that the NLDC has been a CACFP participant, in good standing, since 2000. The preschool only received one prior complaint. On April 22, 2010, the NLDC received a deficiency notice (R-16). The NJDA notice was not even directed to the board members suggesting that it was not a "serious" matter. Director Farrar addressed all of the NJDA's concerns leaving the board of directors with the impression that she (Farrar) was competently discharging her duties and

obligations. Indeed, on June 29, 2010, the NJDA notified New Life that it had adequately addressed the deficiencies and was in compliance with the program (R-17). The same food service system in place during June 2010 is the same system that was in place in November 2012, making the service of the deficiency notice a complete surprise to the board. Banks explained that board's response to the most recent deficiency notice (2013) is substantially more detailed, competent, and proactive when compared to 2010. The board took this matter very serious since it was the first time the board member had been directly put on notice of CACFP violations and threatened with placement on a national registry.

The NJDA deadline for submission of a corrective action plan was April 24, 2013. The NLDC met this deadline. But the NLDC argued that it needed more than forty-five days to implement the plan and is permitted by regulation up to ninety-days<sup>9</sup> to implement its plan. This request was denied or not honored by the NJDA for reasons that were not made clear in this record.

Chairperson Banks and Counsel for New Life proffered that the preschool is and remains compliant with the NJDA and the USDA programs and regulations, particularly since MBA Dianna Berry was added to its staff in mid-May 2013. Nevertheless, the NJDA will not, and has not, returned to the preschool since June 4, 2013. The NJDA will not review the corrective actions implemented between April 22, 2013, and July 22, 2013, even though the facility remains a full participant in the program and is receiving full federal funding.

Harvey Lambert, Vice President of the NLDC Board testified. He has been on the board for nine years. He also is employed as a high school guidance counselor with Atlantic City High School (ACHS). ACHS participates in the CACFP program, according to Lambert. Lambert is also involved in other volunteer positions. Placement on a national disqualification list will adversely impact his employment and reputation. He was not served with the deficiencies notices from the NJDA because of an incorrect address. Nevertheless, he became aware of the NJDA accusations and kept abreast of the corrective measures being implemented

---

<sup>9</sup> 7 C.F.R. § 226.6(c)(4)(iii).

by the New Life staff and Banks. Lambert was aware that Banks was spearheading the effort and working diligently with Reverend Howard, Dianna Berry, Carolyn Farrar, and other staff members to fix the problems.

The NLDC argues that most of the deficiencies are de minimus. (e.g. training admittedly completed by the NJDA but not documented by the NLDC; one poster not hung; electronic swipe cards used for participant head counts rather than actual head counts at each meal; minor meal component deviations when measure against the substantial daily menus and meal selections offered to the children; inspections encompassing the period right after Superstorm Sandy; the NJDA conducting an inspections when Director Farrar was out seriously ill; and finding serious paperwork deficiencies because a teaching staff member filling in for Farrar did not know how to navigate through her desk and filing system while she was out ill).

#### **FINDINGS OF FACTS, WEIGHT OF EVIDENCE AND CREDIBILITY**

1. The NLDC operates a preschool under the auspices of the New Hope Baptist Church in Atlantic City.
2. The NLDC Board of Directors are parishioners and community volunteers that help operate the preschool. They are not stakeholders, shareholders or owners of the school.
3. Cheryl Banks is the volunteer Chairperson of the Board and Hanley Lambock is the volunteer Vice Chairperson. They are the only board members that remain parties that to the present action.
4. Since 2000, the NLDC has been a participant in the CACFP food program administered by the NJDA.
5. In 2010, the NJDA performed an administrative review of the NLDC.
6. The 2010 administrative review did not yield any serious deficiencies (R-16). The eligibility applications were properly maintained and found to be in compliance. The program cost, attendance records, and milk purchases were properly

maintained and in compliance. The sanitation along with licensing records were in compliance (R-16). Non-serious deficiencies were noted with meal counts, menus and infant meal parent option forms. The board of directors and director of preschool program timely addressed all the deficiencies and their cooperation was acknowledged by the NJDA (R-17).

7. In February 2013, the NJDA performed another administrative review at the New Life. The period under review was November 2012. Superstorm Sandy struck Atlantic City on October 29, 2012, leaving the coastal area devastated. I take notice and **FIND** that Atlantic City was declared a disaster area and the City was closed by order of the Governor for about one week. There was a lengthy recovery period for local businesses and the community after the historic storm.

8. The administrative review of the November 2012 time period yielded deficiencies that the NJDA determined to fall within serious category. These include missing documents; eligibility applications not dated; twenty eligibility applications need to be resubmitted (re-determined); missing attendance records; over and under claims for meals; missing meal components (e.g. protein or vegetable); insufficient milk; cost deficiency; training not recorded; posting civil rights poster (R-2:12). The proofs established that these deficiencies were mostly paperwork related, fell into only a few categories, and occurred right after a historic storm.

9. The NLDC staff and board promptly addressed the alleged deficiencies and submitted two detailed correction plans (April 22, 2013, and July 16, 2013) (R-4 and P-3). This included engaging an MBA to assist in the administration of the CACFP program.

10. The NLDC staff and board did not ignore the alleged deficiencies, responded in good faith, and implemented the correction plan between the period April 22, 2013, and July 16, 2013. The NLDC continues to implement corrections, if or when needed.

11. The NJDA performed a follow up inspection on June 4, 2013 (R-12). The inspection was conducted by Sheppard. Director Farrar was out (seriously) ill for about three weeks. And Farrar was charged with implementing the corrective plan. It was also primary election day. The person second in charge (Womack) was

working the election. Paula Denson, a teaching staff member attempted to assist Sheppard go over the corrective actions implemented by Director Farrar. But, Denson was not sufficiently familiar with the actions taken by Farrar or familiar with her desk, filing system, etc. Sheppard was frustrated because she could not find records pertinent to her review. The meeting lasted about forty minutes and Sheppard left (9:00 a.m. to 9:40 a.m.).

12. Based upon the records reviewed from November 2012, (immediately after Superstorm Sandy) and a follow-up inspection conducted in June 2013, when Director Farrar was out ill, the NJDA proposes to terminate the NLDC from participation in the CACFP program and place its chairperson and vice chairperson on a national disqualification list.

13. The NJDA issued a Notice of Intent to Terminate on July 10, 2013, notwithstanding New Life's ongoing aggressive corrective actions (See P-6; Discretion of the State Agency no's. 16,17,18). An appeal was filed by the NLDC.

14. The official NJDA USDA policy states:

The issuance of the proposed termination and disqualification **does not mean that the institution should stop working on corrective action.** In fact, the State agency can **accept corrective action at any point up until the institutions agreement is terminated.** If the institution submits documented evidence which convinces the State agency that the institution has fully and permanently corrected the serious deficiency, the State agency may accept the institutions corrective action and temporally defer the proposed termination. This is not considered a settlement agreement because it would be acceptable corrective action. (R-18); [emphasis added] See also, 7 C.F.R. § 226.6(c)(B) (Successful corrective action)

15. The New Life did not stop working on its corrective action as urged by the USDA policy, but the NJDA refuses to re-inspect New Life.

## **CREDIBILITY**

The determination of a serious deficiency hinges on the weight and credibility placed upon the testimony and documentary proofs. The NJDA asserts, through the testimony of Sheppard and her assessment form, that the NLDC was missing a substantial number of documents. This is inconsistent with the Administrative Review Form notations found on Sheppard's assessment form completed on March 5, 2013 (R-2). First when selecting an audit month it is highly prejudicial to select a month where the participant was impacted by a historical storm (Superstorm Sandy). It is highly prejudicial to use the results obtained during this extraordinary period as a means to terminate a program and register the board members on a national disqualification list. Therefore, the selection November 2012, as the audit month was itself a flaw in the audit or review process. November 2012, was not a typical month of operation and deviations from the program standards or norms would be expected. Therefore, the selection of November 2012, undermines the credibility of the assessment review.

The assessment form, recorded contemporaneously by Sheppard in March 2013, reveals the following inconsistencies when measured against the testimony of the NJDA witnesses:

**Section 10** of the review credibly demonstrates that the NLDC possessed most critical documents including - its NJDA application, NJDA agreement, sponsor management plan, procurement standards, CACFP memos, claims for reimbursement, building for the future posters, justice for all posters, documented system to monitor outside employment regarding conflicts, and all program records for five years (R-2:2). The NLDC established that it was in substantial compliance with this part of the program. Ten out of eleven (ninety-two percent) of the vital records identified in the review form were noted to be in compliance with the program requirements (R-2:2). This is not a substantial deficiency related to records.

**Section 11** credibly confirmed the NJDC used the current eligibility

applications provided by the CACFP and the family income and size was used to determine the applications (R-2:2). Twenty out of the sixty student's applications were either not dated or were missing some information, but most if not all applications were on file. The NLDC had current enrollment records on file that lists all of the program participants (R-2:3). The lack of pertinent information on twenty of the applications carried over and impacted the reimbursements as well as over and under claims (**Section 13, 14 and 21**; R-2:3-4). The NLDC explained that going forward the twenty deficient applications would be corrected for 2013-2014 school year which began September 2013. And all twenty defective applications would be converted to the lowest form of reimbursement. The response by the NJDC was reasonable and credible because the forms were already erroneous when submitted by the eligible parent and the NLDC is the party that was losing the maximum reimbursement for the remainder of the year. This removed any prejudice the CACFP program. The errors in the twenty eligibility forms raise important program concerns but the NLDC response or corrective action adequately addressed the issue, prospectively.

**Section 15** confirmed that attendance records supported the number of meals claimed for the month reviewed (R-2:4). The NLDC explained that it used an electronic card system for head count purposes. When students check each morning their attendance is recorded and it was thereafter assumed that each student will be present for all meals. This was reasonable and credible. The electronic system is a reliable tool and a proper use of modern technology for efficiency, accountability and resource management. It averts human error and manipulation by staff. Nevertheless, the review noted that manual head counts nominally deviated from the electronic head counts because some children might leave school early or simply skipped a meal. The NLDC agreed to return to the manual head count method at each meal. This was credible and reasonable use of technology; albeit not what the NLDA wanted for its program. Indeed, the NLDC agreed to go back to the outdated manual head count system as part of its correction plan, which was a reasonable response. This was not a serious deficiency under the reasons and circumstances presented.

**Section 22** confirmed that the NLDC substantially complied with the menus and meals (R-2:6-7). Daily dated menus for all meals were present, substitutions, additions or deletions were noted on the menus, cycled menus were used, the menus contained a good variety that meets the minimum USDA requirements, the center served commercially prepared products. Indeed, this section also noted that twenty-five meals were somewhat deficient in the required USDA food components. But the deficiencies were minor when compared to the menus, as a whole (R-10; R-11) which offered a myriad of healthy food choices as confirmed by Sheppard when she checked the USDA minimum requirement box with a “yes” (R-2:6). This was not a substantial deficiency.

**Section 23** involves the milk components/purchases. Sheppard documented that the NLDC required twenty-eight gallons of milk and only had proof of purchasing one gallon of milk for November 2012. It is unclear from this record how much milk was even available after Superstorm Sandy. Clearly, November 2012, was not a typical month particularly since a state of emergency was ordered and all roads entering the Atlantic City Barrier Island were closed for at least one-week. Most food stores or suppliers were impacted for weeks thereafter. The records reflect that the NLDC served water with some of the meals during this month which would not be unexpected in the aftermath of Sandy.

**Section 25** involves food operations and cost. This section in part, incorporates the conclusion from the other sections related to milk purchases and maintaining copies of receipts (R-2:8 and 12). Again, November 2012, was an atypical month. Therefore, deviations were expected.

**Section 28** addresses training records. The review form notes that the NLDC was compliant with all training requirements but the information was not documented on the required form (R-2:9). The NLDC met the important substantive training requirements. Whether the training was documented on the “proper form” was not a substantial deficiency. And the correction plan easily resolved this concern, prospectively.



**Section 30** addressed the posting of the civil rights notice. The review form noted that the NLDC had all the appropriate notices and posters during the March 5, 2013 audit of the November 2012 time period. This includes the “Justice for All” poster and the “Building for the Future” poster. The civil rights poster is not a requirement found on the review form under this section (R-2:2). And the absence of the civil right poster did not pose a substantive or material food program deviation that affects the health, safety, or welfare of the participants. Moreover, this could easily be resolved by providing the NLDC with the poster. This was not a substantial deviation.

### **CONCLUSIONS**

The burden of proof is on the government to prove by the preponderance of the competent and credible evidence all of the material facts essential to the charges, in administrative enforcement actions. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). I **CONCLUDE** the NJDA failed to meet its burden that the NLDC had serious deficiencies or that the correction actions taken by the NLDC board failed to substantially resolve the alleged deficiencies.

The USDA sponsors the CACFP and assists states through grants and other means "to initiate and maintain nonprofit food service programs for children in institutions providing child care." 42 U.S.C.A. § 1766(a)(1). States administering the CACFP are charged with ensuring that participating institutions have the administrative capable, financial viability and program accountability (i.e. internal controls and management systems) to ensure that programs operate in accordance with the regulations (R-14:5). 42 U.S.C.A. § 1766(d). The CACFP is governed by a federal-state agreement, which provides that the state agency charged with administering the CACFP will comply with the program statutes and regulations.

The NJDA administers the CACFP in this state. Institutions that participate in the program are governed by reimbursement agreements, which regulate the respective responsibilities of the NJDA and the participating institution. Reimbursements are permitted only to those institutions in compliance with the terms of

the agreements and related regulations.

Upon discovering one or more **serious deficiencies** (discussed *infra*), the NJDA provides written notice and an opportunity for the participating institution to take corrective action. 7 C.F.R. § 226.6(c)(3)(iii)(A). If **corrective action is not taken within the prescribed time**, the NJDA is required to seek the participant's termination from the program.

A hearing is permitted, 7 C.F.R. § 226.6(k), and if terminated, the institution and responsible principals are placed on the National Disqualification List for seven years or until it is determined that the deficiency has been corrected, 7 C.F.R. § 226.6(c)(7). This means that an institution cannot participate in the CACFP, and that the principals or responsible persons cannot serve as a principal in any institution or facility, or as a day care home provider in the CACFP, until they are removed from the National Disqualification List.

In promulgating the disqualification rules, the Secretary explained that:

Only institutions may be determined to be seriously deficient and given the opportunity to take corrective action. **In most cases, an institution's completion of successful corrective action would cause a State agency to rescind the declaration of serious deficiency against the institution and discontinue any potential action that might be taken to place responsible principals or responsible individuals on the National disqualified list.**

However, ARPA requires us to maintain a list of institutions, day care home providers, and individuals (i.e., responsible principals and responsible individuals, as defined in the preamble, below) that have been terminated or otherwise disqualified from Program participation. It has long been our practice to include institutions and individuals on the 'serious deficiency' list. This step is necessary to recognize that the individuals responsible for the serious deficiencies in one corporation may, if not disqualified, simply form a new corporation in order to return to the Program.

[67 FR 43448 ("Supplemental Information").] [Emphasis added]

As a threshold matter, the NLDC expressed enormous concern that the NJDA is not only attempting to disqualify the preschool from its program, but is also bringing the full weight of the government to bear in an attempt to place its volunteer board members on a national disqualification list. The board members, at worse, can only be viewed as acting in good faith in an effort to operate a church backed preschool for the benefit of the community. The placement of their names on a government disqualification list or registry requires a “stigma plus” analysis. Valmonte v. Bane, 1994 U.S. App. 2d Cir. LEXIS 3993 (1993). What is particularly egregious and unjust with the registry is the complete absence of any distinction among those are eventually determined to have been seriously deficient. The registered individual having done nothing more than inexpertly complete and file paperwork but will share the same listing and be considered of equal culpability to an embezzler, a thief, or fraudster.

If registered, it will not doubt interfere with the registrant’s future employment or volunteer positions with public and private schools, private residential childcare institutions, non-residential childcare institutions, and other charitable operations. Simply put, the targeted board members could not work in the aforementioned titles and/or if currently employed in those titles, would have to self-report. The targeted board members would be detrimentally affected by the registry or list merely because they volunteered to help their local charity (here a preschool program) that was inexpertly administered by the others.

Indeed, the act of registering volunteer church members with cheaters and fraudster would be repugnant to New Jersey’s spirit volunteerism (see, e.g. New Jersey Governor's Advisory Council on Volunteerism).<sup>10</sup> Moreover, the preschool is organized as a non-profit corporation and the volunteers had an expectation they would be afforded some limited protection by the corporate existence from the placement on a stigmatizing national list, absent some more egregious act, such as fraud, recklessness, willful or wanton action.

---

<sup>10</sup> [www.nj.gov/state/programs/dos\\_program\\_volunteerism.html](http://www.nj.gov/state/programs/dos_program_volunteerism.html)

Program disqualification certainly remains legitimate and an important concern for the NJDA and the USDA, but the placement of volunteers a national registry based upon ordinary managerial decisions, is offensive to the notion of volunteerism and contrary to public policy of encouraging volunteerism. It is for these reasons, and with this background, that this case was so forcefully contested by the NLDC.

### **Serious Deficiency**

**Serious** is defined as “very great, bad, dangerous, harmful, or difficult to handle.” **Deficiency** is defined as a “weakness in the provision or performance of something.” [Encarta Dictionary; English (North America); Word Software]. Therefore, for a terminating offense and national registration to occur, the participant’s actions must be very great, dangerous or harmful to its required performance. The CACFP Handbook provides further guidance in determining whether a participant has committed a serious deficiency (R-18). The Handbook states in deciding whether a program violation is a serious deficiency, the state agencies should consider, but not limit themselves to the **severity of the problem**. Is the noncompliance on a **minor** or **substantial scale** and **the degree of responsibility attributable to the institution**? Is there **evidence of negligence** or a **conscious indifference** to regulatory requirements? Or, even worse, is there evidence of **deception**? Also relevant is the institution’s history of participation in the program. Is this the first time the institution is having problems or has noncompliance occurred **frequently** at the same institution? Are the institution’s actions a clear violation of Program requirements? Has the institution incorporated the new policies correctly? Also relevant, is the degree to which the problem impacts program integrity. Are the violations undermining the intent or purpose of the CACFP such as **misuse of funds**? The Handbook uses terms like “severity” of the problem, “substantial scale”, “negligence” as opposed to “conscious indifference”, and “frequently and “deception” as the criteria to determine if the deficiencies are “serious”.

The Handbook provides specific example of serious deficiencies. This includes:.

1. Submission of false information on the institution’s application, including but not limited to a determination that the institution’s RP/Is have concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business

integrity includes deception, antitrust violations, embezzlement, theft, forgery, bribery, fraud or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency;

2. Permitting an individual who is on the NDL to serve in a principal capacity with the institution, or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a DCH provider;

3. Failure to operate the Program in conformance with the performance standards set forth in paragraphs 7 CFR 226.6(b)(1)(xviii); (b)(2)(vii);

4. Failure to comply with the bid procedures and contract requirements of applicable Federal procurement regulations;

5. Failure to return to the State agency any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments;

6. Failure to maintain adequate records;

7. Failure to adjust meal orders to conform to variations in the number of participants;

8. Claiming reimbursement for meals not served to participants;

9. Claiming reimbursement for a significant number of meals that do not meet Program requirements;

10. Use of a food service management company that is in violation of health codes;

11. Failure of a sponsoring organization to disburse payments to its facilities in accordance with the regulations at 7 CFR 226.16(g)-(h) or in accordance with its management plan;

12. Claiming reimbursement for meals served by a for-profit child care center or a for-profit outside-school-hours-care center during a calendar month in which less than 25 percent of the children (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were Title XX beneficiaries;

13. Claiming reimbursement for meals served by a for-profit adult day care center during a calendar month in which less than 25 percent of is enrolled adult participants were Title XIX or Title XX beneficiaries;
14. Failure by a sponsoring organization to properly classify DCHs as tier I or tier II in accordance with 7 CFR 226.15(f);
15. Failure by a sponsoring organization to properly train or monitor sponsored DCHs in accordance with 7 CFR 226.16(d);
16. Use of DCH reimbursement by a sponsoring organization to pay for the sponsoring organization's administrative expenses;
17. Failure to perform any of the other required financial and administrative responsibilities;
18. Failure to properly implement and administer the DCH provider termination and administrative review provisions set forth at 7 CFR 226.16(l);
19. Ineligibility of the institution or any of the institution's principals for any other publicly funded Program by reason of violating that Program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or is now eligible to participate in that Program, including the payment of any debts owed;
20. Conviction of any of in institution's principals for any activity that occurred during the past seven years and that indicates a lack of business integrity. A lack of business integrity includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the State agency; or
21. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [7 CFR 226.6(c)(3)].

I **CONCLUDE** that the NLDC did not commit serious deficiencies during the period under review (November 2012). This period was corrupted from inception

because it involved the period immediately after Superstorm Sandy. Some level of program deviation would be expected after a natural disaster of this magnitude.

I **CONCLUDE** that the NJDA did not establish evidence of deficiencies that had the elevated level of proof involving “severity” of the problem, “substantial scale”, “negligence” as opposed to “conscious indifference”, or “frequently and “deception.” Finally, the NJDA failed to establish that the NLDC action under review were “very great”, “dangerous” or “harmful” to its required performance.

The June 2013, re-inspection regarding the implementation of corrective measures was performed when the director of the program was out (serious) ill. Neither of the two inspection periods (November 2012 or June 2013) were representative of New Life’s normal operations. There was no suggestion or evidence that the board members or staff at New Life were purposely, reckless or negligently undermining the CACFP program. There were no allegations of fraud, bribery intentionally false claims, lack of business integrity, conscious indifference, incompetence, or deception. I am mindful there was some poor record keeping, errors, mistakes and the like during some extraordinary demanding periods. But the review was a very limited snapshot of a difficult time period. The NLDC has been a CACFP participant since 2000 and had an otherwise good record over the fourteen-year period.

I was also impressed with the response from the NLDC board. The preschool management and board did not ignore the allegations and charges. The board and staff reacted with emergency meetings, participated in more training directly with the NJDA, hired more staff, engaged more oversight from the church vicar, performed extensive CACFP program research and gained familiarity along with implementing corrective measures. The NLDC responded assertively in the interest of preserving the program for the sixty preschoolers and avoiding the placement of its board members on a national registry. It was the response the regulating agency should have a high regard for, averting the need to terminate the program and place the board members on a national registry, as expressed by the Secretary, supra.

## **MISCELLANEOUS MATTERS**

### **Jeanne Hutchins - Federal Department of Agriculture**

The NJDA offered the testimony of Jeanne Hutchins, from the USDA. Hutchins was offered to explain the purpose of the program's policies. Hutchins completed substantial direct-examination and cross-examination. New Life intended to continue cross-examine Hutchins in early June 2014, and to introduce documents suggesting compliance with the program.

On June 19, 2014, this ALJ received a telephone message that Rachel Bishop<sup>11</sup> of the USDA called from Washington D.C. regarding the NLDC matter. I contacted Deputy Attorney General Cheryl Clarke to see if she was available, along with counsel for NLDC, so they could participate in a conference call with Bishop. I was advised that DAG Clarke was on vacation. As a courtesy, I returned Bishop's call rather than waiting for DAG Clarke to return from her vacation. I asked Bishop if she was an attorney and she advised that she was. Bishop then proceeded to ask me questions about witness testimony in this above matter, to wit: Jeanne Hutchins. Bishop advised that Hutchins had been asked inappropriate questions that are beyond the scope of her employment while testifying before the undersigned. Bishop further advised this ALJ that there will be no further questions presented to Hutchins involving the interpretation of USDA policy as it relates to corrective action. The call ended abruptly after the undersigned instructed Bishop to enter an appearance and file a motion regarding her concerns. No motion or appearance was filed. Hutchins failed to appear on July 7, 2014, the date set for continued cross-examination. The NJDC requests that an adverse inference be drawn.

When a witness refuses to testify, the Court could call the witness to testify unless that witness was able to establish a privilege. In the Matter of Jose DaSilva, 2004 N.J. Agen. LEXIS 1583, p. 4. Hutchins did not invoke a privilege but rather simple refused to come back for cross-examination. I did not perceive that Hutchins's failure to

---

<sup>11</sup> My staff determined Bishop is Senior Counsel from the Office of the General Counsel for the USDA.



return for cross-examination was for evasive or spurious reasons. Nonetheless, she did not return and it prejudiced New Life's case. This tribunal is permitted to draw a negative inference from her refusal to testify. Id., citing, Bastas v. Board of Review, 155 N.J. Super. 312 (App. Div. 1978); Duratron Corporation v. Republic Stuyvesant Corporation, 95 N.J. Super. 527 (App. Div. 1967), certif. den., 50 N.J. 404 (1967). The NLDC urges that the inference to be drawn from Hutchins's refusal to testify is that the position she advocated including the administrative procedural deficiencies that resulted in serious deficiencies, was not the case and that NLDC had achieved full compliance as of July 16, 2013. Drawing this inference would be a "quantum leap" because Hutchins was a policy witness, and not a fact witness. Even if Hutchins completed her testimony and was subject to full cross-examination, she would not have offered any factual differences that would have undermined the testimony of Sheppard, the NJDA primary fact witness. Thus, I am not inclined to draw an adverse inference and conclude that all of the NJDC papers were in good order. It is the duty of the undersigned to make the ultimate conclusions, not Hutchins.

The NLDC also claims it was deprived of its right to confront Hutchins and test the veracity of her testimony via cross-examination. Her removal from the proceedings violated the NLDC right to due process. The NLDC moved that Hutchins's first two days of testimony be stricken. This is a better course of action. I **CONCLUDE** that Hutchins's testimony be stricken from this record and will not be considered, based upon her unilateral, premature and inappropriate withdraw from this proceeding.

### **Public Policy Supporting Volunteerism and Non-Profit Corporate Protection**

In the instant case, it was questioned whether the NLDC board members, being members of a charitable nonprofit corporation, should be protected by the corporate veil from individually liability (placement on a national registry) for violations of the CACFP program. Most cases that result in personal responsibility or liability, involve corporations where the board members are stakeholders, shareholders, investors, or owners. This matter is uniquely distinct from those cases and circumstances.

A corporation is a separate entity from its shareholders, Lyon v. Barrett, 89 N.J. 294, 300 (1982), and that a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise. Berle, "The Theory of Enterprise Entity," 47 Colum. L. Rev. 343 (1947); Note, "Piercing the Corporate Veil: The Alter Ego Doctrine Under Federal Common Law," 95 Harv. L. Rev. 853, 854 (1982); H. Henn, Law of Corporations § 146, p. 250 (2d ed. 1961). Even in the case of a parent corporation and its wholly owned subsidiary, limited liability normally will not be abrogated. Muller v. Seaboard Commercial Corp., 5 N.J. 28, 34 (1950). Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. Lyon v. Barrett, 89 N.J. at 300. The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, Telis v. Telis, 132 N.J. Eq. 25 (E. & A.1942), to perpetrate fraud, to accomplish a crime, or otherwise to evade the law, Trachman v. Trugman, 117 N.J. Eq. 167, 170 (Ch.1934).

The NLDC argues that the NJDA has not proven that its principals "disregard[ed] the corporate form and utilize[d] the corporation as a vehicle for committing equitable or legal fraud." Marascio v. Campanella, 298 N.J. Super. 491, 502 (App. Div. 1997), citing, Walensky v. Jonathan Royce Intern., 264 N.J. Super. 276, 283 (App. Div.), certif. den., 134 N.J. 480 (1993).

Research reveals that the placement of a board member on a national disqualification list does not implicate the corporate veil body of law. The New Jersey Supreme Court's decision in Dep't of Labor v. Titan Constr. Co., 102 N.J. 1 (1985), is instructive on the issue of whether board members of a corporation may be held individually liable for violations under the CACFP. In Titan, the Court disapproved the Appellate Division's decision in Dep't of Labor v. Berlanti, 196 N.J. Super. 122 (App. Div. 1984). The Court held that the Commissioner of Labor had not only the express authority under the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 to -56.47) to debar contractor and subcontractor entities from public contract work, but also the implied authority to debar corporate officers, individually and separately, for the failure to pay their employees the prevailing wage for public works. Id. at 4, 11-12. As the Court explained:

[a]t most, the statutory language is ambiguous and cannot be read to confer, as the Commissioner suggests, an express grant of power to debar corporate officers individually. This, however, does not end the inquiry as to the scope of the Commissioner's authority. We have consistently recognized that agency power can be inferred from the legislative objectives that inspired a statute's enactment . . . In performing this inquiry, our purpose is to enable the agency to achieve the legislative intent . . .

Guided by this principle, we are satisfied that the Commissioner's authority to debar responsible corporate officers, or responsible principals of non-corporate entities, may be inferred from the public policy expressed in the Act. As noted above, the purpose of the Act is 'to protect [employees] as well as their employers from the effects of serious and unfair competition' that result from inadequate wages. N.J.S.A. 34:11-56.25. Debarment is one of the means employed by the Act to deter contractors from paying less than the prevailing wage. It is evident that if the Commissioner's power to debar were limited to the contracting entity, thereby permitting the individuals responsible for the violation to form new enterprises to engage in public work projects, the deterrent effect of debarment would be seriously impaired. Accordingly, we hold that the Commissioner's power to debar those individuals in corporate and non-corporate entities who are responsible for the failure to pay the prevailing wage on public work contracts is an incidental power necessary to achieve the legislative objectives that the Act is designed to implement.

[Id. at 10-12 (citations omitted).]

It is noteworthy that the Court made no mention of the "corporate veil" in its decision in Titan, and instead reasoned "agency power can be inferred from the legislative objectives that inspired a statute's enactment." Titan, supra, 102 N.J. at 10.

It is clear the national disqualification list is designed to maintain the integrity of the CACFP. In order to achieve this goal, 42 U.S.C.A. § 1766, as amended, authorizes the Secretary to maintain a list of disqualified institutions and individuals. In Titan, the Court recognized that "[i]t is evident that if the Commissioner's power to debar were limited to the contracting entity, thereby permitting the individuals responsible for the

violation to form new enterprises to engage in public work projects, the deterrent effect of debarment would be seriously impaired.” Titan, supra, 102 N.J. at 11.

Here, like in Titan, and as the Secretary has noted, the disqualification of responsible principals and individuals “is necessary to recognize that the individuals responsible for the serious deficiencies in one corporation may, if not disqualified, [could] simply form a new corporation in order to return to the Program.” Thus, the secretary’s authority to disqualify responsible principals and individuals is implied from the goals and objective of the governing statute. In this way, the corporate veil may be pierced.

But the case law mentioned above does not address the facts unique to the instant matter. Here, the persons targeted for registration on a national disqualification list are not corporate owners, stakeholders, founders, or shareholders. They are not those persons that would likely re-file for eligibility. Furthermore they are being held vicariously liable and strictly liable, despite the corporate formation, with no consideration given to their ability to prevent or correct the errors committed by others. Why would anyone volunteer if they are exposed to placement on a national registry for a food operation run by staff members?

In Division of Alcoholic Beverage Control v. Maynards, Inc., 192 N.J. 158 (2005), the Supreme Court discussed the limits of strict liable under our system of justice. Id. at 185. Maynards involved the very important role of regulating the alcohol industry. The owners of Maynards were held strictly liable in accordance with the Division of Alcohol Beverage Control’s (ABC) regulations involving the sale of narcotics in licensed establishments. The ABC imposed strict liability – with a one-year suspension of Maynard’s license for allowing the sale of illicit drugs in its establishment. The penalty was reversed in part because of public policy considerations including management’s lack ability to even be aware of the illicit drug sales, management’s prevention and mitigation efforts, and management’s good character. All of these factors must be considered against “the quantum of the penalty to be imposed” Ibid.

Like Maynard's, the board members of New Life are merely community volunteers with careers and full time jobs in other areas, and are being swept up in a regulatory paradigm that is at odds with the notion of volunteerism and non-profit corporate participation. These factors, for public policy reasons, should be considered when the "quantum of penalty" is imposed, including strict liability and placement on a national registry. Since the findings and conclusions resulted in a remedy favorable to the members of the NLDC, this legal issue need not be resolved herein but will be reserved for an appeal, if any.

**ORDER**

Based upon the foregoing, it is hereby **ORDERED** that New Life shall not be terminated from participation in the CACFP and that it's Board of Directors including the Board Chairperson and Vice Chairperson shall not be placed on the National and State Disqualification Lists. The NJDA shall continue to work with New Life to ensure that the correction plan is implemented properly and that New Life is and remains in compliance with the CACFP program. The NJDA shall conduct future inspections at its discretion and may take additional action, as it deems necessary to ensure compliance.

This decision is FINAL pursuant to 7 C.F.R. 226.6 (k)(5)(x).

December 11, 2014

DATE

**W. TODD MILLER, ALJ**

Date Received at Agency:

December 11, 2014

Date Mailed to Parties:

jb/lam

**WITNESSES**

**For petitioner:**

Kate Sheppard, NJDA, field technician  
Jeanne Hutchins<sup>12</sup>, Federal Department of Agriculture  
Traci Butler Proctor, NJDA supervisor  
Robin Wilson, NJDA Supervisor

**For respondent:**

Paula Denson, Teacher  
Cheryl Banks, New Life Board Chairperson  
Dianna Berry, New Life Board Member  
Harvey Lambert, New Life Vice Chairperson

**EXHIBITS**

**For petitioner:**

- P-1 CACFP Eligibility Chart
- P-2 September 2013 Student Eligibility Applications (partially redacted)
- P-3 July 16, 2013, Corrective Action Plan
- P-4 August 2013, Letter from NJDA re: NLDC's Request for Technical Assistance
- P-5 NJDA Letter, dated August 12, 2013, Revoking Offer for Technical Assistance
- P-6 November 7, 2005, NJDA Training Memo
- P-7 List of NLDC's Board of Directors
- P-8 NLDC Director's Report, dated November 8, 2013

---

<sup>12</sup> The testimony of Hutchins was stricken as explained in the body of the Initial Decision.

P-9 NLDC Profit and Loss, dated October 2013 and June 2013

For respondent:

- R-1 NJDA Letter, dated February 25, 2013
- R-2 CACFP Administrative Review Form
- R-3 NJDA Seriously Deficient Notice, dated April 9, 2013
- R-4 New Life Letter, Dated April 22, 2013, dated Corrective Action Plan
- R-5 CACFP Eligibility Responsibility Chart
- R-6 Student Eligibility Applications (partially redacted)
- R-7 Receipts
- R-8 CACFP Income and Operating Cost Form
- R-9 CACFP Meal Count Form
- R-10 New Life Menu Week of October 29-November 2, 2012 (note: Superstorm Sandy struck on October 29, 2012)
- R-11 New Life Menu April 1 – 5, 2013
- R-12 NJDA Notice of Intent to Terminate, dated July 10, 2013
- R-13 USDA Nutrition Standards
- R-14 NJDA CACFP 2008 Agreement with NLDC
- R-15 NJDA February 1, 2013, Notice NLDC Agreement was Approved
- R-16 NJDA April 22, 2010, Letter to NLDC re: Violations
- R-17 NJDA June 29, 2010, Letter to NLDC re: Violations Resolved
- R-18 USDA Handbook December 2013