



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

**FINAL DECISION**

OAL DKT. NO. AGR 15892-12

AGENCY DKT. NO. #12-17-954

**15<sup>TH</sup> STREET KIDDIE CORNER  
DAY CARE CENTER,**

Appellant,

v.

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

Respondent.

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**Pedro P. Mercedes**, Program Director, **Pedro J. Mercedes**, Executive Director  
and **Fidela L. Mercedes**, Substitute President, appearing pursuant to  
N.J.A.C. 1:1-5.4(a)(5).

**Cheryl Clarke**, Deputy Attorney General, for respondents (Jeffrey S. Chiesa,  
Attorney General of New Jersey, attorney)

Record Closed: February 20, 2013

Decided: March 25, 2013

BEFORE **SANDRA ANN ROBINSON**, ALJ:

**STATEMENT OF THE CASE**

Appellant, 15<sup>th</sup> Street Kiddie Corner Day Care Center (Kiddie Corner) and its principals or responsible persons, Pedro P. Mercedes (Program Director), Pedro J.

Mercedes, Sr. (Executive Director), and Fidela L. Mercedes (substitute person/president), appeal the determination of respondent, the New Jersey Department of Agriculture Child and Adult Care Food Program (NJDA/CACFP) that issued a Notice of Intent to Terminate Kiddie Corner and disqualify the principals from future participation in the program. The Intent to Terminate is based on the failure of Kiddie Corner and its principals to fully and permanently correct the serious deficiencies and repeated findings identified in the Notice of Intent to Terminate. Appellant argues that good faith has been demonstrated by the correction of significant numbers of cited deficiencies and that corrective actions were properly satisfied when the Corrective Action Plan was faxed with other documents to the Department of Agriculture. Appellant argues that the Termination of Kiddie Corner is not warranted.

Respondent contends Administrative Reviews were conducted timely and appropriately, that technical assistance, information documents, verbal information and training was provided to appellant to assist and strengthen the accuracy of CACFP program compliance. Respondent also contends that appellant was given every opportunity and sufficient time with extended deadlines to correct deficiencies in Kiddie Corner program operations but was unable to prepare, present and/or implement corrective actions so as to become compliant with CACFP program regulations pursuant to section 226.6(b)(2)(vii) of the CACFP regulations (7 C.F.R. 226.6(b)(2)(vii). Respondent contends that since appellant has had repetitive deficiencies in the 2007, 2009, and 2012 Administrative Reviews that it is apparent that appellant is unable comply with the legal requirements for operating Kiddie Corner and termination of the program is warranted.

### **PROCEDURAL HISTORY**

On October 18, 2012, the New Jersey Department of Law and Public Safety, Division of Law received the appeal in this matter. On November 26, 2012, the Division of Law transmitted this matter to the Office of Administrative Law (OAL) 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. The appeal was received at OAL on December 3, 2012. On December 7, 2012, the case

was assigned to the undersigned and on the same date the parties agreed to commence testimony on January 8, 2013, based on the availability to hear the matter, taking into consideration the December holidays. A Notice of Hearing was mailed to the parties.

On January 4, 2013, OAL received a letter from the Deputy Attorney General (“DAG”), dated January 3, 2013, that informed OAL that the Division of Law requested and received an extension of the time for the completion of the case and the issuance of the Final Decision by OAL. The letter sets forth that the Final Decision from OAL is due on or before January 15, 2013. The case commenced on January 8, 2013, and could not be completed on that date. The DAG had two additional witnesses that required additional dates for testimony. Appellant’s case would require another full day for testimony if the other two principals named in the Notice of Intent to Termination were called to testify. The parties agreed to continue the case on January 17 and 18, 2013. On February 19, 2013, the undersigned was compelled in the interest of fairness to listen to the verbatim testimony of Pedro J. Mercedes (a pro se appellant) pertaining to the chronology of events, efforts and actions attempted by Kiddie Corner to correct and rectify deficiencies. The need for additional testimony after January 15 precluded the issuance of a Final Decision on the same date as did the necessity to listen to portions of the record after February 19, 2013. The exhibits appearing in the Appendix were agreed upon between the parties and marked as evidence. The record was closed on February 20, 2013.

### **CASE BACKGROUND**

October 1, 2008, is the effective date for the Child and Adult Care Food Program Permanent Agreement (CACFP) between the State of New Jersey Department of Agriculture (Department) and Kiddie Corner. The Department and Kiddie Corner agreed to the following,

The Sponsor: Represents and warrants that it will accept final administrative and financial responsibility for total CACFP operations at all centers, at-risk after school programs, emergency shelters, and/or proprietary Title XIX

and Title X) (centers referenced in the agreement with the Department; and understands and agrees that any publications by the Institution may be freely copied by the Department or by other institutions authorized by the CACFP.

Certifies as to the number of private for-profit adult care centers or child care centers under its auspices that received amounts granted to the State under Title XIX (adult centers) or Title XX (child care centers or adult care centers) of the Social Security Act for at least 25% of each center's enrolled participants or 25% of each center's licensed capacity (child care centers only) during the month preceding application to the program (or at those times authorized by the U.S. Congress, for child care centers only, 25% of each center's enrolled participants or 25% of each center's licensed capacity, are eligible for free or reduced-price school meals); and shall continue to certify and provide such information in each succeeding month. Proprietary institutions shall not claim reimbursement for meals served under the CACFP in any month for any proprietary centers that do not meet these criteria. If an institution is a for-profit sponsoring organization, it also certifies that all centers under this agreement have the same legal identity as the Institution. Institutions operating adult care centers shall not claim reimbursement for meals under the CACFP, which are also claimed under Title III.

Any changes in approval criteria will be communicated via a copy of an updated addendum and/or Schedule A. Such updated or other required documents shall be considered a modification for the duration of this agreement.

[(September 2009 Administrative Review.)]

On October 14, 2009, the Bureau of Child Nutrition (BCN) issued a letter to Kiddie Corner on the results of the administrative review conducted on September 11, 2009, and September 18, 2009. Records for the month of May 2009 were reviewed. Federal regulations for BCN and CACFP Agreement require that each sponsor follow all procedures set forth and described therein. The October 14, 2009, letter provides a summary of the overall findings of the administrative review and lists the identified program deficiencies as well as the corresponding corrective actions necessary for program compliance. The administrative review evaluated the following operations of the CACFP:

**AREA 1 - Accuracy of Eligibility** applications for all enrolled participants to determine the number of participants classified in the free, reduced, and paid categories. Each sponsor must maintain household size and gross income documentation for each participant claimed as eligible for the free or reduced rate of reimbursement.

Deficiencies Noted: Seven eligibility applications were determined inappropriately, two were outdated and twelve were missing. The applications were reviewed, reclassified and re-categorized, which caused a change in the over-claim of \$752.16. Terminated applications should be maintained in a separate file. Several participants were recorded at the incorrect rate of reimbursement and nineteen participants were not recorded at all on the eligibility record. An accurate eligibility record to summarize participants' eligibility must be maintained so that changes can be monitored for reporting eligibility totals on monthly reimbursement vouchers.

Corrective Action Required: Submit a Corrective Action Plan explaining how you will ensure that complete and current eligibility and supportive income documentation, for all participants, will be monitored. Complete the Eligibility Responsibility Chart provided, in order to demonstrate that Kiddie Corner is in compliance with USDA regulations. Include the name and title of the person responsible for monitoring this process.<sup>1</sup>

**AREA 2 - Program Costs, Meal Counts, Attendance Records, Milk Purchases and Dated Menus**

Deficiencies Noted: (Program Costs) The CACFP Reimbursement Agreement requires that the amount of documented food program costs equal or exceed the amount of reimbursement received during any agreement year. Sponsors must compare costs incurred to earned reimbursement on a monthly basis. During the September 11, 2009 and September 18, 2009 review, the reviewed documented costs did not support the amount of reimbursement received for the month of May 2009; and costs documentation for April 2009 was not available.<sup>2</sup>

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<sup>1</sup> The October 14, 2009, Evaluation Summary and all other summaries, letters and warnings provided appellants with notice that failure to comply with program regulations could result in a seriously deficient determination and an additional over-claim to the sponsorship.

<sup>2</sup> Appellant was provided with worksheets for estimating, monitoring, comparing and controlling child

Corrective Action Required: A copy of the completed worksheets for the 2010 agreement year must be submitted and the worksheets must list the costs incurred not the bills paid.

Deficiencies Noted: (Meal Counts) Reimbursement paid to each sponsor each month is based on the number of free, reduced and paid meals multiplied by the rates of reimbursement. The meal counts reviewed show an over-claim for Kiddie Corner of 174 breakfasts, 174 lunches, and 286 pm supplements. Kiddie Corner also under-claimed 173 breakfasts, 173 lunches, and 285 pm supplements. The over-claims and under-claims are due to incorrect eligibility classification recorded on the meal count record for several participants. The point of meal service meal-count records was not available for the Infant/Toddler Classroom and the Outside School Hours Program. Meal counts cannot be based on attendance with a computerized program. Taking meal-counts accurately by hand, at the point of meal service should reflect when participants are absent, leave early or come in late to Kiddie Corner and miss meals. The errors affected the over-claim of \$752.16 to Kiddie Corner.

Corrective Action Required: The required meal-count form must be implemented immediately in all classrooms. Submit: (1) A Corrective Action Plan that explains how you will ensure that each meal served to enrolled participants will be recorded correctly on the required CACFP meal-count record according to the eligibility classifications. (2) Copies of Kiddie Corner's totaled meal-count and eligibility records for the period of October 1, 2009 and October 23, 2009 to verify that meals being claimed for reimbursement are recorded correctly. Recommendations: The State recommends maintaining the eligibility record, meal counts, and attendance records in alphabetical order by classroom and includes the participants' full names, with correct spelling, on all CACFP records.

Deficiencies Noted: (Dated Menus) All meals claimed for reimbursement must meet minimum USDA nutritional requirements as listed on the CACFP "Agreement Schedule B." At the time of the September 2009 review, an infant menu was not available, food components were not specified, the name Kiddie Corner was not documented on the menu and the pm supplement meal service was missing

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and adult care food program income and operating costs. The worksheets provide information on how to estimate reimbursement and operating costs so as to compare the two and plan accordingly.

one of the two required components on May 12, 2009. The meal was disallowed because of the non-compliance as set forth in this paragraph and therefore affected the over-claim of \$752.16 to the Kiddie Corner sponsorship. An additional meat/meat alternate must be provided when serving ravioli if the ravioli does not have a CN label, ensure that the required amount of fruit is served with jell-o and rice with homemade rice pudding.

Corrective Action Required: Submit a copy of Kiddie Corner's daily dated menu, including infant menu that will be served during the month of October 2009 to verify that all meals served meet the minimum nutritional requirements listed on the CACFP Agreement Schedule B.

### **AREA 3 - Training and Other Program Documentation**

Deficiencies Noted: (Training) Each sponsor is required to establish procedures to collect and maintain documentation of annually required CACFP training sessions. During the review documentation of required training was available but was not documented on the required CACFP form.

Corrective Action Required: Immediately implement the required training form that was provided at the time of the review.

Deficiencies Noted: (Program Records and Documents) CACFP Reimbursement Agreement requires sponsors to maintain program documents on file. At the time of September 2009 review, the Claims for Reimbursement Program Applications, CACFP Memos and Outside Employment Policy records were not on file. All required CACFP documents must be maintained on the site and not at a separate location.

Corrective Action Required: Submit a Corrective Action Plan that explains how you will ensure that the required CACFP documents will be maintained on file. Include the name and title of the person who will be responsible for these documents and disclose where they will be maintained.

### **AREA 4 - Observation of Lunch to Verify Compliance with Minimum U.S.D.A. Component and Portion Size Requirements**

Deficiencies Noted: (Pizza Lunch) - The observed pizza lunch meal that was ordered from a restaurant did not contain the required milk component. That meal could not be reported on the Kiddie Corner September 2009 voucher. Meals must be closely monitored because claiming unapproved meals could result in an additional over-claim to the Kiddie Corner sponsorship.

Corrective Action Required: The "First In/First Out" method of food labeling should begin immediately. A written Corrective Action Plan explaining what procedures will be established to ensure that each meal service will comply with USDA meal pattern requirements and program regulations must be submitted along with an explanation of who will monitor meal service compliance and how often monitoring will occur.

Deficiencies Noted: (Infant Meal Requirements) Infants from birth through 11 months must be offered infant meals when enrolled in CACFP child care facility. Under the infant meal pattern, infant formula is a required component. To obtain reimbursement under the CACFP, the facility must purchase and offer infant formula, unless breast milk is provided by the infant's mother and is expressed and served by a program employee. Infant formula had not been purchased at the time of the September 2009 review. There were no parent option forms available for infants enrolled in the center at the time of the review. The State requires that a signed and dated parent option form be kept on file for those infants whose parents provide formula.

Corrective Action Required: Submit a written Corrective Action Plan to explain how Kiddie Corner will ensure that infant meal patterns will comply with USDA meal requirements.<sup>3</sup> Submit a copy of a parent option form that will be implemented by Kiddie Corner. The State recommended Kiddie Corner representatives attend Eligibility and Record Keeping training sessions scheduled for November 18, 2009 and November 20, 2009.

The deadline for completion of the Corrective Action of deficiencies noted in the September 2009 review was set for no later than three weeks from the October 14, 2009, the date on the review summary letter, and payment of the over-claim of \$752.16 was

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<sup>3</sup> The State provided information on Reimbursement of Infant Meals in the Child Nutrition Programs and a sample CACFP Infant Meal Notification Letter to parents to assist Kiddie Corner to prepare to implement the requirement.

due within thirty-days or on or prior to October 14, 2009.

**(June 12 and August 9, 2012, Administrative Review Resulting in the Issuance of a Seriously Deficient Notice)**

On August 16, 2012, a Seriously Deficient Notice pertaining to program operations of Kiddie Corner was issued to Mr. Pedro J. Mercedes, Ms. Fidela L. Mercedes, and Mr. Pedro P. Mercedes as the principals responsible for the serious deficiencies. The Seriously Deficient Notice is based on the findings of the Administrative Review conducted at Kiddie Corner in June and August 2012. Records for the month of March 2012 were reviewed. The August 16 Seriously Deficient Notice summarizes overall findings, lists deficiencies and provides an explanation of what corrective actions must be taken to meet CACFP program compliance. Kiddie Corner failed to meet federal regulation requirements for CACFP performance standards for Organizational Accountability and Administrative Capability. The overall inadequate management of the Kiddie Corner food service program is the underlying reason for the serious program deficiencies.<sup>4</sup>

The CACFP reviewer in conjunction with other CACFP personnel determined that Kiddie Corner is seriously deficient in its operation. CACFP specified that if Kiddie Corner did not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date that a proposal to terminate the Kiddie Corner Agreement to participate in the CACFP and a proposal to disqualify the principals, Mr. Pedro J. Mercedes, Ms. Fidela L. Mercedes and Mr. Pedro P. Mercedes from future CACFP participation would be issued.

**(Repeated Serious Deficiencies in the 2012 Administrative Review that were Identified in the 2009 Administrative Review)**

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<sup>4</sup> Kiddie Corner was scheduled for an Administrative Review on June 12, 2012. Mr. Pedro P. Mercedes who was responsible for preparing for the review was unreachable and unavailable allegedly due to sickness. A request to reschedule the review was denied. Mr. Pedro J. Mercedes was present on-site on June 12, 2012, for the commencement of an administrative review. The Administrative Review was completed on August 9, 2012, during an unannounced visit to Kiddie Corner.

The deficiencies set forth below are repetitive of the findings in the 2009 Administrative Review and therefore, have not been fully and permanently corrected and now are classified on the level of seriously deficient.

**AREA 1 – ELIGIBILITY:** Problems were identified with participant eligibility applications. All enrolled participants were examined to determine the number of participants classified as free, reduced, and paid categories. Each sponsor must maintain household size and gross income documentation for each participant claimed as eligible for the free or reduced rate of reimbursement. During the review several applications were missing and were never submitted by Kiddie Corner. Twelve eligibility applications were unavailable during review; 12 were incorrectly determined and 29 were missing. The applications were re-determined and an over-claim was assessed.

Corrective Actions Required: Complete the Eligibility Responsibility Chart, provided by the State, in order to demonstrate that Kiddie Corner is in compliance with CACFP regulations. Submit a Corrective Action Plan to explain how Kiddie Corner will ensure that complete and current eligibility and supportive income documentation, for all participants, will be monitored, include the person responsible for monitoring this process. Submit a written Corrective Action Plan that explains how Kiddie Corner will ensure that complete and current eligibility applications for all participants will be monitored; include the person responsible for monitoring, this process. Submit copies of the Kiddie Corner corrected eligibility applications and eligibility record in order to demonstrate compliance with program requirements.

**AREA 2 - MEAL COUNTS:** Problems were identified with meal counts. At the time of the review, meal count records for the month of March 2012 did not support the claim for reimbursement. Meal count deficiencies were caused by several eligibility deficiencies, such as incorrect eligibility classifications recorded on the Meal Count Record for participants; and incorrectly tallied meals. There are over-claims identified, specifically 668 breakfasts, 668 lunches, and 779 pm supplements. Also, identified under-claims included 691 breakfasts, 692 lunches, and 778 pm supplements. The over-claims created an assessment of \$3,146.27 to the Kiddie Corner sponsorship.

Corrective Action Required: Submit a written Corrective Action Plan to explain how Kiddie Corner will ensure that each meal served to enrolled participants will be counted and recorded correctly on the meal count record, according to proper eligibility classifications. Submit copies of the meal count and eligibility records for the month of June 2012 to verify that meals being claimed for reimbursement are recorded correctly.

**AREA 3 - TRAINING AND DOCUMENTATION:** Problems were identified with Civil Rights Training and Training Documentation. At the time of the review, no formal documentation was available in the areas of record keeping, meal service, sanitation, USDA meal requirements, and Kiddie Corner had not conducted the required annual civil rights training.<sup>5</sup>

Corrective Action Required: Submit a training schedule that lists the topics, trainer(s), trainees and date(s) of each of the required training sessions. These sessions must be conducted within ten days of the date of this letter and documented on the CACFP required training form. Submit a written Corrective Action Plan that explains how Kiddie Corner will ensure that the required CACFP documents will be maintained on file; include the specific date when training will be conducted and who will be responsible for completing this task. Include a copy of the civil rights training contents with the corrective action plan.<sup>6</sup> At the time of the review, the Procurement Standards, Building for the Future Poster/Information, Justice for All Poster, Outside Employment Policy and Certificate of Incorporation or Disclosure of Ownership documents were not available.<sup>7</sup> Submit a written Corrective Action Plan that explains how Kiddie Corner will ensure that the required CACFP documents will be maintained on file and include the name and title of the person responsible for the documents and where they will be maintained. Further, complete the Procurement Standards and Outside Employment Policy form

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<sup>5</sup> Technical assistance was provided on proper procedures to implement this training requirement and a website was provided.

<sup>6</sup> The CACFP office informed Kiddie Corner that eligibility and recordkeeping training sessions were scheduled for August 23 and 24, 2012, and November 14 and 16, 2012, and suggested based on the deficiencies in the review that Kiddie Corner send two representatives training sessions. The training invitation would be mailed under separate cover.

<sup>7</sup> Kiddie Corner was instructed to display the posters in a prominent area and to provide parents annually with "Building for the Future" information.

that has been provided and return a copy with the corrective actions. Submit a copy of Kiddie Corner Certificate of Incorporation or Disclosure of Ownership.

**AREA 4 - MENUS AND INFANT FORMULA:** Checks were made to verify compliance with minimum USDA component and portion-size requirements and the following deficiencies raised concerns about Kiddie Corner's compliance and conformance with CACFP food service operation performance standards, C.F.R. § 226.6(b)(1)(xviii)(A), (B) and (C) (Infant Meal Requirements): When infants from birth through 11 months participate in the program, an "infant meal shall be offered." Childcare centers participating in CACFP must offer program meals to all eligible children who are enrolled for care in their facilities. (Infant Formula): Under the infant meal pattern, infant formula is a required component in order for a child care facility to obtain reimbursement under the CACFP. At the time of the review, Kiddie Corner had purchased infant meal components for emergency situations, but was not offering a regular infant meal service. Also, there was no documentation available to verify if parents were notified of the center's obligation to purchase and offer meals to all enrolled infants, or to indicate whether they would supply breast milk, infant formula, and/or other infant meal components. Signed and dated parent notification forms must be kept on file for those infants whose parents provide formula.

Corrective Action Required: Submit a Corrective Action Plan that explains how Kiddie Corner will ensure that infant meals are offered and comply with USDA meal requirements. Submit two completed copies of the parent option form that will be implemented by your agency. Submit a copy of an individual infant menu for two infants enrolled in Kiddie Corner during the month of June 2012 to verify that all meals served meet the minimum nutritional requirements listed on the CACFP Agreement Schedule B.<sup>8</sup> Kiddie Corner must improve management oversight and ensure additional staff is trained in the daily operation of the CACFP.

The deadline for completion and receipt by CACFP personnel of the Corrective Action of deficiencies noted in the August 16, 2012, Seriously Deficient Notice was set

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<sup>8</sup> The State provided Kiddie Corner with the CACFP Infant Feeding Guide, a technical assistance package and other instructional information.

for no later than 4:00 p.m. on August 31, 2012, “in-hand, no extension will be granted.”

**(NOTICE OF INTENT TO TERMINATE)**

On October 3, 2012, respondent issued Kiddie Corner a Notice Of Intent To Terminate the CACFP Agreement and to disqualify the principals—Mr. Pedro J. Mercedes, Ms. Fidela L. Mercedes, and Mr. Pedro P. Mercedes—because of their failure to fully and permanently correct the seriously deficient program operations identified during the June 12 and August 9, 2012, Administrative Review. Respondent proposed to terminate Kiddie Corner operations and disqualify the principals when full and permanent corrections were not made by the August 31, 2012, the initial correction deadline date, or by September 10, the second extension deadline date or by September 24, 2012, the third and final extension deadline date.

The trigger to the October 3, 2012, Notice of Intent to Terminate are the specific deficiencies listed below, which are repetitive of the deficiencies in the 2007 and 2009 Administrative Reviews and not corrected in the 2012 Administrative Review;

**AREA 1 - ELIGIBILITY:** Corrective Actions Not Received: Eligibility Responsibility Chart, Corrected Applications, Eligibility Record, and Corrective Action Plan.

**AREA 2 - MEAL COUNTS:** Corrective Actions Not Received: Written Corrective Action Plan and copies of meal count and eligibility records to document how you will ensure meals served to participants are recorded correctly.

**AREA 3 - CIVIL RIGHTS TRAINING DOCUMENTATION:** Corrective Actions Not Received: Written Corrective Action Plan that explains how Kiddie Corner would ensure that the required CACFP documents would be maintained on file and the name and title of the person responsible for completing this task.

**AREA 4 - PROGRAM DOCUMENTATION:** Corrective Actions Not Received: Corrective Action Plan that explains how Kiddie Corner would ensure that required CACFP documents would be maintained on file, who would be responsible for

the documents and where the documents will be maintained. The Procurement Standards and Outside Employment Policy were never submitted to respondent.

**AREA 5 - INFANT MEAL REQUIREMENTS:** Corrective Actions Not Received: Written Corrective Action Plan explaining how Kiddie Corner would ensure infant meals would comply with USDA meal requirements. Copies of infant menus that comply with USDA regulations were never received by respondent.

On October 3, 2012, CACFP proposed that since Kiddie Corner had not fully and permanently corrected the serious deficiencies identified above and as set forth in the Serious Deficiency Notice, dated August 16, 2012, that the CACFP Agreement to operate should be terminated and the principals/responsible persons for the operation of Kiddie Corner (Mr. Pedro J. Mercedes, Ms. Fidela L. Mercedes, and Mr. Pedro P. Mercedes) should be disqualified.

## **SUMMARY OF TESTIMONY**

### **Respondent's Witnesses**

Lannie Paschall, was employed with Newark Public Schools for thirty-seven years, of which he served as principal for ten years. He then commenced his current employment as Field Technician with DOA and has been with DOA for fourteen years. Mr. Paschall conducted the 2012 Administrative Review of Kiddie Corner. Mr. Paschall testified as follows,

Kiddie Corner is a proprietary "for profit" business with a Pre-School Program and an outside of school hours' program. It is also a self-prep program, meaning that food is prepared on-site. I had problems scheduling the review because the principals told me the center had been reviewed one month before. I scheduled an Administrative review for June 12, 2012. When I arrived, Pedro P. Mercedes let me in, but said he was not prepared, his food worker was out and he (Pedro P. Mercedes) was not feeling well. Pedro P. Mercedes asked for a postponement of the review, which was denied by my supervisor Ms. Butler Proctor. In order to commence the review on June 12<sup>th</sup>, I asked for documents, which should

have already been laid-out, but were not. Some eligibility applications were not available, twelve were incorrectly determined and twenty-nine were missing.

I provided Pedro P. Mercedes with technical assistance and gave him an opportunity to present documents after June 12, 2012.

I attempted four times by telephone to contact Pedro P. Mercedes to schedule the completion of the Administrative Review and to do an Exit Conference. On July 27<sup>th</sup> I was told that Pedro P. Mercedes was away on vacation. During the morning on August 1, 2012, I was told he (Pedro P. Mercedes) was not at Kiddie Corner in the morning. During the afternoon on August 2, 2012, I was told he had not arrived at Kiddie Corner as of 3:15 p.m. I telephoned Pedro P. Mercedes three additional times and received no answer and no message-machine. I discussed that situation with my supervisor who instructed me to stop calling and to schedule an unannounced visit. On August 9, 2012, I went to Kiddie Corner for the unannounced visit and Exit Conference.

During the Exit Conference, Pedro P. Mercedes submitted additional documents. I explained to him that the new documents had no bearing on what was found on the review date.

On cross-examination, Mr. Paschall responded to Pedro P. Mercedes inquiry, as follows,

Kiddie Corner meets all requirements except for the deficiencies contained in the Notice of Serious Deficiency reviewed at the current Exit Conference.

Tracii Butler Proctor, Assistant Coordinator, CACFP, has been employed with the New Jersey Department of Agriculture for ten years. She is responsible for overseeing State-program operations inclusive of supervising program specialist in each county, training, scheduling and performing administrative reviews and determining the sufficiency of corrective actions, maintaining the integrity and fairness of operations within the requirements of the federal regulations and performing administrative functions.<sup>9</sup> Ms. Butler Proctor discussed segments of the Permanent Agreement (which

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<sup>9</sup> Ms. Proctor has administered more than one-hundred Administrative Reviews at DOA.

is delineated fully elsewhere in this document and the need for mandatory sponsor training. She testified as follows,

Sponsors are required to be trained in an Introduction to CACFP, Eligibility Requirements and Record Keeping prior to commencing operations. Thereafter, training is recommended and offered four times each year, at which time sponsors learn of regulatory changes.

I know Kiddie Corner, I have spoken with Pedro P. Mercedes and have seen him in a training session. Pedro P. Mercedes has four CACFP programs. He was provided and is aware of the Agreement between the Food and Nutrition Service (FNS) and the United States Department of Agriculture (USDA) New Jersey (State Agency) that sets forth the requirements for administering the Child Nutrition Program and the Food Distribution Programs. Pedro P. Mercedes is also aware that in order to be reimbursed from USDA participant information must be complete and correct, and the sponsor, Kiddie Corner, must meet VAC, which is to be viable, accountable and capable of operating the program.

He knows that if eligibility information is incomplete or inaccurate a sponsor over-claim is possible, which would cause Kiddie Corner to return funds to NJ DOA.

On August 8, 2011, Pedro P. Mercedes signed a Sponsor Management Plan for CACFP. On the same date he signed Proprietary Letter of Certification. The Management Plan is submitted to the administrative assistant at DOA, who checks and corrects figures. Revisions are submitted to the sponsor with a letter of approval for budget and reimbursement expenses. If the form is correct it is placed in the supervisors file. Reimbursements vouchers are submitted once per months and DOA reimburses sponsors once per month.

The Kiddie Corner 2012 budget package was approved in January 2012 using an estimated maximum reimbursement assessment with a budget breakdown.

On May 23, 2012, a letter was mailed to Kiddie Corner to notify the responsible persons of a June 12, 2012, Administrative Review. The letter included a checklist of what documents to have ready for the review.

Kiddie Corner was not prepared for the June 12<sup>th</sup> Administrative Review. Pedro P. Mercedes was not in when

the CACFP field technician arrived and Pedro J. Mercedes did not have the documents ready or available for a review. Pedro P. Mercedes called-in sick and wanted to reschedule the review, which was denied. The field technician used the time for a desk audit and reviewed Kiddie Corner documents that could be retrieved by Pedro J. Mercedes. Significant deficiencies were noted. The field technician informed me that he attempted several times to contact Pedro P. Mercedes to reschedule, but Pedro P. Mercedes could not be found, nor did he return phone messages.

The field technician visited Kiddie Corner unannounced on August 9, 2012 to complete the 2012 Administrative Review, a Site Review and an Exit Review/Conference. A Site Review Form was signed by Pedro P. Mercedes on August 9, 2012;

Kiddie Corner had some of the same deficiencies that it had in 2009, such as eligibility determination and record keeping issues. Kiddie Corner responsible persons and other personnel were invited to training on November 18, 2009 to review the areas of Eligibility including program applications, withdrawals and additions; and to review Record Keeping, including Meal Counts, Attendance records, Menus, Document submission for claims and identifying which documents to use when filing claims. Kiddie Corner personnel or responsible persons did not attend.

On August 26 and 27, 2010, there was another training session for Eligibility and Record Keeping. Pedro P. Mercedes was in attendance for the Eligibility training on August 26, but not for the Record Keeping session on August 27<sup>th</sup>.

I provided Pedro P. Mercedes with technical assistance every time there was a Kiddie Corner program deficiency. The repeat of 2009 deficiencies found while reviewing Kiddie Corner in 2012 lead to the Seriously Deficient Notice on August 16, 2012. Kiddie Corner did not respond to the Seriously Deficient Letter and the letter was not returned to Kiddie Corner.

On September 10, 2012, Kiddie Corner faxed some corrective actions to me and I reviewed them. There were still deficiencies that had to be corrected. I went through everything with Pedro P. Mercedes on the same date and explained to him what to do and what the corrective actions had to contain when submitted.

On September 24, 2012, I reviewed the submissions sent in response to my September 20, 2012 telephone discussion with Pedro P. Mercedes and I requested that more corrective actions be submitted. I still have not received a list of training sessions and the names of persons who would be attending; parent notification forms of infant meal requirements; CACFP Annual Staff Training Documents for August 10, 2012 . . . . On September 24, 2012, I again contacted Pedro P. Mercedes to inform him that he had not complied with all of the corrective action requirements. He told me he understood and had submitted everything by fax that he was supposed to.

After September 24, 2012, I had no more conversations with Pedro P. Mercedes and the Corrective Action Plan form was never received at DOA.

On October 3, 2012, a Notice of Intent To Terminate was faxed and mailed over-night to Pedro P. Mercedes from DOA.

On cross-examination, Ms. Butler Proctor responded,

I sometimes collect my own faxes, or someone else collects them for me. Documents can get misplaced. Pedro P. Mercedes told me he faxed the Corrective Action Plan, but I did not receive it. The information and documents I did receive were inadequate and incomplete. As of September 24, 2012 a Corrective Action Plan had not been submitted for areas in the category of Eligibility, Meal Count, Civil Rights Training Documentation, Program Documentation and Identification of Training Sessions and person who will attend the training sessions.

Michael Smith, child care specialist, CACFP, has been employed with DOA for eleven years as a program specialist. His responsibilities include training, approval of renewal applications and conducting Administrative Reviews. Mr. Smith conducted the 2009 Kiddie Corner Administrative Review and is familiar with the concerns and deficiencies. Mr. Smith testified as follows,

On August 9, 2009, I mailed an Administrative Review Appointment Letter to Pedro P. Mercedes for a review date of September 9, 2009. The review period would be for the month of May 2009. On October 14, 2009, I submitted a Corrective Action Letter to Kiddie Corner with a deadline

date noted for three weeks from October 14<sup>th</sup> or on November 4<sup>th</sup> for the submission of the corrective actions. Deficiencies were identified in the areas of Eligibility Applications; Program costs, meal counts (which are repeated findings from 2007), attendance records, milk purchases and dated menu review; Dated Menus; Program Documents; USDA Meal Pattern Requirements; Infant Meal Requirements; and, CACFP Training.

On November 9, 2009, Lyndsay Hall, field technician, mailed a Warning Letter to Pedro P. Mercedes to caution him that if corrective actions were not forth coming Kiddie Corner operations would be subject to termination. A new corrective action submission dated was set for November 18, 2009. Corrective Actions were not received on November 18, 2009.

On November 23, 2009, the field technician mailed another Warning Letter to Pedro P. Mercedes and informed him that no additional extensions would be granted.

On April 1, 2010, the field technician wrote to Pedro P. Mercedes to inform him that the corrective actions for program deficiencies had been received and adequately addressed the deficiencies so that Kiddie Corner was now in compliance with program regulations.

On cross-examination, Mr. Smith, responded to Pedro P. Mercedes, as follows,

Yes, there are complications with your other day care sites. Warning letters were sent to you to help prevent termination. DOA tries to come up with solutions to help a sponsor and to provide support services.

**(Pedro P. Mercedes)**

(Appellant/Program Director)

Pedro P. Mercedes, testified as follows,

I believe I faxed to DOA everything I was told to. I question whether the DOA fax machines printed out the legal size document. The documents I faxed to the machine were on legal size paper. There are discrepancy in the number of pages actually faxed as opposed to the number pages

recorded as received on the fax summary sheet.

During the Exit Conference, Mr. Paschall, the field technician, did not speak with me about the forty corrective actions needed. We discussed how to correct the deficiencies. During the Exit Conference it was not made clear to me exactly what needed to be corrected. I was asked questions during the interview and I answered them.

I did fax some documents after September 10, 2012 and I received telephone call from Ms. Butler-Proctor to inform me that the submission was incomplete. The Infant Feeding Plan was also prepared after the Notice of Serious Deficiency, as was the Renel Estevez Eligibility Application. In regard to the infant formula, Kiddie Corner has Similac. I understand now that the content on the corrective action form is used to divert termination.

### **FINDINGS OF FACT**

The following **FACTS** are not in dispute and, accordingly, I **FIND**:

1. The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) has an agreement with the NJDA to oversee the CACFP, a program that provides reimbursements to approved sponsors to assist them in providing more nutritional meals to their participants (generally young people and senior citizens);
2. Tracii Butler-Proctor is the New Jersey assistant coordinator who oversees the CACFP in New Jersey. Ms. Butler-Proctor is familiar with the sponsor application process;
3. Pursuant to the ongoing agreement with the USDA, New Jersey must comply with CACFP requirements for financial viability, program accountability and administrative capability;
4. On October 1, 2008, the Permanent Agreement (Agreement) between CACFP and the State of New Jersey Department of Agriculture and Kiddie Corner became effective. Changes in approval criteria must be communicated via a copy of an

updated addendum and/or Schedule A. All modifications are considered for the duration of the Agreement;

5. Kiddie Corner as a Sponsor, represents and warrants in the Agreement that it will accept final administrative and financial responsibility for total CACFP operations at all centers, at risk after school programs, emergency shelters, and/or proprietary Title XIX and Title X) (centers referenced in the Agreement with the Department;
6. The Agreement provides that if the sponsor fails to comply with the requirements of the program, the sponsor and its principals can be terminated. Sponsors are required to keep records of daily meals served, and receipts and invoices for food and milk purchases to verify the use of the funds provided. Any over-claims must be refunded to the State;
7. Depending on the child's family's income, a sponsor is approved for full or partial reimbursement of the cost of the food and milk served to the eligible child;
8. Kiddie Corner serves children in its program commencing from infancy;
9. As a requirement for participating in the program, sponsors must receive three days of training. The State also provides technical assistance to sponsors, to prepare them for periodic monitoring to ensure program compliance. An Administrative Review may be conducted annually, but not less than every three years;
10. On October 14, 2009, BCN issued a summary letter to Kiddie Corner about the outcome of the administrative review conducted on September 11, 2009, and September 18, 2009. The September review focused on the correctness of the records for the month of May 2009;
11. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the area of Eligibility, as follows - a). Seven eligibility applications were determined inappropriately, two were outdated and twelve were missing, b). Several participants were recorded at the incorrect rate of

- reimbursement and c). Nineteen participants were not recorded at all on the eligibility record;
12. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the areas of Program costs, meal counts, attendance records, milk purchases and dated menus, as follows – a). The reviewed documented costs did not support the amount of reimbursement received for the month of May 2009; and b). cost documentation for April 2009 was not available;
  13. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the area of Meal Counts, as follows, - a). The meal counts reviewed show an over-claim for Kiddie Corner of 174 breakfasts, 174 lunches, and 286 pm supplements; b). Kiddie Corner under-claimed 173 breakfasts, 173 lunches and 285 pm supplements; and c). The point of meal service meal-count records was not available for the Infant/Toddler;
  14. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the area of Dated Menus, as follows, - a). An infant menu was not available, b). food components were not specified c). The name Kiddie Corner was not documented on the menu and, d). The pm supplement meal service was missing one of the two required components on May 12, 2009;
  15. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the areas of Training and other program documentation, as follows, - a). Documentation of annually required CACFP training sessions was not on file, b). Documentation of required training was not documented on the required CACFP form;
  16. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the area of Program Records and Documents, as follows - The Claims for Reimbursements, Program Applications, CACFP Memos and Outside Employment Policy records were not on file at the site;
  17. During the September 2009 Administrative Review Kiddie Corner had

deficiencies in the areas of Verification of compliance with minimum U.S.D.A. component and portion size requirements, as follows - The pizza lunch meal ordered from a restaurant, did not contain the required milk component.

18. During the September 2009 Administrative Review Kiddie Corner had deficiencies in the areas of Program Records and Documents, as follows - To obtain reimbursement under the CACFP, the facility must purchase and offer infant formula, unless breast milk is provided by the infant's mother and is expressed via signed consent form then served by a program employee. Infant formula had not been purchased and there were no parent option forms available for infants enrolled in the center at the time of the September 2009 Administrative review.
19. The deadline for completion of the Corrective Action of deficiencies noted in the September 2009 Administrative review was set for October 14, 2009;
20. The date for the over-claim payment of \$752.16 was due within thirty days or on or prior to October 14, 2009;
21. On June 12 and August 9, 2012, respondent conducted another Administrative Review of Kiddie Corner. The Results of the Review was disclosed by respondent on August 16, 2012, via a Seriously Deficient Notice.
22. The June and August 2012 Administrative Review focused on the correctness of records for the month of March 2012. Kiddie Corner failed to meet federal regulation requirements for CACFP performance standards for Organizational Accountability and Administrative Capability. The overall inadequate management of the Kiddie Corner food-service program was identified as the underlying reason for the serious program deficiencies;
23. The August 16, 2012, Seriously Deficient Notice specifies that if Kiddie Corner did not fully and permanently correct all of the serious deficiencies and submit documentation of the corrective action by the due date that a proposal for termination of operations and disqualification the principals/responsible persons would be issued;
24. The majority of the serious deficiencies set forth in the August 16,

2012, Notice are repetitive deficiencies that had previously been identified in the 2007 and the 2009 Administrative Reviews. The 2007 deficiencies were corrected prior to the continuance of program operations, but the same deficiencies resurfaced in 2009. The 2009 deficiencies were corrected prior to program continuance in 2010, but the same deficiencies resurfaced again in 2012. Kiddie Corner was approved for operations early in 2012 year, prior to the commencement of the 2012 Administrative Review, which started in June 2012 and covered the month of March 2012;

25. The following 2012 deficiencies areas are repetitive of the findings in the 2009 Administrative Review and have not been fully and permanently corrected and are now classified as seriously deficient:

**ELIGIBILITY:** Several applications were missing and were never submitted by Kiddie Corner. Twelve eligibility applications were unavailable during review; twelve were incorrectly determined and twenty-nine were missing.

**MEAL COUNTS:** Meal count records for the month of March 2012 did not support the claim for reimbursement. Meal count deficiencies were caused by several eligibility deficiencies, including incorrect eligibility classifications recorded on the Meal Count Record for participants; and incorrectly tallied meals. The over-claims identified included 668 breakfasts, 668 lunches, and 779 pm supplements. Also, under-claims included 691 breakfasts, 692 lunches, and 778 pm supplements. The over-claims created an assessment of \$3,146.27 to the Kiddie Corner sponsorship.

**TRAINING AND DOCUMENTATION:** There was no formal documentation available in the areas of record keeping, meal service, sanitation and USDA meal requirements. Also, Kiddie Corner had not conducted the required annual civil rights training.

**MENUS AND INFANT FORMULA:** Kiddie Corner had purchased infant meal components for emergency situations, but was not offering a regular infant meal service. There was no documentation available to verify if parents were notified of the center's obligation to purchase

and offer meals to all enrolled infants, or to indicate whether they would supply breast milk, infant formula and /or other infant meal components. Signed and dated parent notification forms were not observed;

26. Kiddie Corner was given an August 31, 2012, deadline for completion of corrective actions and receipt in-hand by CACFP personnel of the Corrective Action Deficiency Plan;
27. Kiddie Corner did not meet the August 31, 2012 deadline. Respondent permitted an extension of time to September 10 and another extension to September 24, 2012, in which to make corrections. Kiddie Corner did not meet the extended deadline;
28. On October 3, 2012, respondent issued Kiddie Corner a Notice Of Intent To Terminate the CACFP Agreement and to disqualify the principals/responsible persons because of their failure to fully and permanently correct the seriously deficient program operations identified during the 2012 Administrative Review and as set forth in the Seriously Deficient Notice dated August 16, 2012;
29. As of October 3, 2012, respondent had not received corrective actions in the following areas from Kiddie Corner:

**ELIGIBILITY:** Eligibility Responsibility Chart, Corrected Applications, Eligibility Record, and Corrective Action Plan;

**MEAL COUNTS:** Written Corrective Action Plan and copies of meal count and eligibility records to document how you will ensure meals served to participants are recorded correctly;

**CIVIL RIGHTS TRAINING DOCUMENTATION:** Written Corrective Action Plan that explains how Kiddie Corner would ensure that the required CACFP documents would be maintained on file and the name and title of the person responsible for completing this task;

**PROGRAM DOCUMENTATION:** Corrective Action Plan that explains how Kiddie Corner would ensure that required CACFP documents would be maintained on file,

who would be responsible for the documents and where the documents will be maintained and copies of Procurement Standards and Outside Employment Policy;

**INFANT MEAL REQUIREMENTS:** Written Corrective Action Plan explaining how Kiddie Corner would ensure infant meals would comply with USDA meal requirements and copies of infant menus that comply with USDA regulations;

30. On October 3, 2012, the Notice Of Intent To Terminate, proposed that since Kiddie Corner had not fully and permanently corrected the serious deficiencies identified above and as set forth in the August 16, 2012, Serious Deficiency Notice that the CACFP Agreement to operate should be terminated and the principals/responsible persons for the operation of Kiddie Corner should be disqualified.
31. Kiddie Corner was afforded numerous opportunities to prepare and implement a corrective action plan to eliminate the deficiencies, but was unable to do so in five primary mandatory areas of compliance per Federal Regulations.

### **LEGAL ANALYSIS**

N.J.A.C. 2:36-1.1 to -1.13 sets forth the general provisions for the child nutrition programs pursuant to 7 C.F.R. §§ 210, 215, 220, 245. The NJDA Bureau of Child Nutrition (BCN) administers the eligibility standards to be used by all sponsors participating in the child nutrition programs. N.J.A.C. 2:36-1.3. Pursuant to N.J.A.C. 2:36-1.9(b), federal and state child nutrition program funds may be withheld and/or fiscal action taken against sponsors (see 7 C.F.R. §§ 210.19(c), 220.14(a), 215.12(a) and 245.10) found not to be in compliance with applicable federal regulations 7 C.F.R. §§ 210, 215, 220 and 245 and the New Jersey School Nutrition/Wellness Policy).

The term “sponsor” means the school food authority participating in any child nutrition program. N.J.A.C. 2:36-1.1. “School” means a site operating under the supervision of a sponsor as defined in the New Jersey Administrative Code. Ibid. “Child Nutrition Programs” means the National School Lunch Program, School Breakfast

Program, After School Snack Program, Fresh Fruit and Vegetable Program, Special Milk and Split-Session Kindergarten Milk Programs, Child Care Food Programs and the Summer Food Service Program. Ibid. If approved to be a participant in the program, a sponsor must count and record daily, at the point of service, the number of meals/snacks or milks served by category (free, reduced price and paid). N.J.A.C. 2:36-1.12. Each sponsor's implementation of the Free and Reduced Price Policy and the New Jersey School/Nutrition Wellness Policy must be reviewed and evaluated by the Division of Food and Nutrition, within the State Department of Agriculture, on a continuing basis for compliance. N.J.A.C. 2:36-1.9(a).

Pursuant to 7 C.F.R. § 226.6(c)(3) (2010), sponsors who violate the CACFP requirements are subject to a Seriously Deficient Notice, and if the deficiencies are not corrected, to termination from the program. If disqualified from participation, the sponsor and those responsible are placed on the national and state disqualified lists. This means that the institution cannot participate in the CACFP, and that the principals or responsible persons could not serve as a principal in any institution or facility, or as a day care home provider in the CACFP. Their names would all remain on the lists until such time as the USDA's Food and Nutrition Service, in consultation with the NJDA, determined that the serious deficiencies had been corrected, or until seven years after their disqualification.

In this matter, there is no dispute that 15<sup>th</sup> Street Kiddie Corner and its principals are seriously deficient in complying with federal and State requirements for operating the program, especially the areas of eligibility for program, meal counts, training and documentation, program documents – completion, monitoring correctness/accuracy, place of filing and storage, purchasing infant formula for regular and emergency meals, and infant meal menus and USDA Components and portion-size requirements. Numerous violations were observed during the 2012 Administrative Review that have not been remedied or corrected. The fiscal integrity of the program and appropriate reimbursement to the State have been substantially compromised since Kiddie Corner has failed to comply with applicable federal regulations 7 C.F.R. §§ 210, 215, 220 and 245 and the New Jersey School Nutrition/Wellness Policy.

As the result of that failure, the decision was made to terminate Kiddie Corner and

place the principals on the National and State disqualification lists, which would prevent them from being eligible to participate in the CACFP and thereby receive reimbursement for the cost of nutritious meals.

While recognizing and acknowledging the deficiencies, Kiddie Corner requests leniency because of other program areas that have no deficiencies. Compliance and correction of deficiencies should not have been difficult for Kiddie Corner because respondent had instructed the principals on how to correct the deficiencies. Appellant did not take the time to assure that deficiencies were corrected. The excuse about the fax paper is incredible because the principal's could have hand-delivered the corrected package to respondent during the extended period to make corrections, from August 31, 2012, to September 24, 2012. The reissuance by the principals of the same documentation to respondent appeared to be an effort have respondent believe appellants were engaging in good faith attempts to correct the deficiencies.

Respondent's provided the appellants with training and extended the deadline twice for correction of the deficiencies before informing Kiddie Corner of the intent to terminate the program. No good reason or cause was presented by Kiddie Corner for respondent to grant another extension or warrant reconsideration of the proposal to terminate and disqualify.

### **CONCLUSION**

I **CONCLUDE**, based on the testamentary and documentary evidence, that significant evidence has been produced to prove the existence of serious deficiencies in the operation of Kiddie Corner.

I **CONCLUDE** that some of the deficiencies are repetitive having been observed in Administrative Reviews in 2007, 2009, and 2012 and that therefore the deficiencies have not been fully and permanently corrected.

I **CONCLUDE** that the persons responsible for the operations of Kiddie Corner, the principals/responsible persons, Pedro P. Mercedes, Pedro J. Mercedes, Sr., and

Fidela L. Mercedes, do not have the ability to operate Kiddie Corner in conformance with the required performance standards for administrative capability and organizational accountability as set forth by CACFP program regulations pursuant to section 226.6(b)(2)(vii) of the CACFP regulations (7 C.F.R. 226.6(b)(2)(vii) and should be terminated from further CACFP participation, effective thirty (30) days from the date of this decision.

I **CONCLUDE** that termination and disqualifications from the Child and Adult Care Food Program will also affect all programs under the auspices of Kiddie Corner, and other agreements the principals/responsible persons may have with the Bureau of Child Nutrition.

**ORDER**

I hereby **ORDER** that appellant, 15<sup>th</sup> Street Kiddie Corner Day Care Center and its principals/responsible persons Pedro P. Mercedes, Pedro J. Mercedes, Sr. and Fidela L. Mercedes be **TERMINATED** from further participation in the CACFP, subject to any reimbursements to which they may be entitled from the program. I **ORDER** that the names of Pedro P. Mercedes, Pedro J. Mercedes, Sr. and Fidela L. Mercedes be placed on the National and State disqualification lists until the USDA's Food and Nutrition Service, in consultation with the NJDA BCN, determines that the serious deficiencies have been corrected or until seven years after their disqualification, whichever occurs first.

This decision is **FINAL** pursuant to 7 C.F.R. § 226.6(k)(5)(x) (2010).

March 25, 2013



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DATE

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**SANDRA ANN ROBINSON, ALJ**

sej

**APPENDIX**  
**WITNESSES**

For Appellant:

Pedro P. Mercedes, Director, Kiddie Corner

For Respondent:

Lannie Paschall, field technician CACFP

Tracii Butler-Proctor, assistant coordinator CACFP

Michael Smith, child care specialist CACFP

**EXHIBITS**

For Appellant:

- A-1 CACFP/CAP, dated June 12, 2012
- A-2 Fax Activity Sheet from September 4 through September 26
- A-3 CACFP Eligibility record, effective September 8, 2011 **Limited**
- A-4 Food Program Eligibility Record, dated September 28, 2012 **Not Admitted**
- A-5 Infant Feeding Plan for Ponce **Not Admitted**
- A-6 Infant Feeding Plan for Lopez **Limited**
- A-7 Renel Estevez Eligibility Application, dated September 28, 2012  
**Not Admitted**
- A-8 Raymond Pena Letter, dated before seriously deficient letter **Not Admitted**
- A-9 Andres Parraga Eligibility Application, dated September 28, 2012 **Limited**

For Respondent:

- R-1 Federal – State Agreement Child Nutrition and Food Distribution Programs, effective October 2008, Addendums April 2009
- R-2 Child and Adult Care Food Program Permanent Agreement, effective October 1, 2008
- R-3 Child and Adult Care Food Program Sponsor Management Plan, with attachments, signed on August 8, 2011

- R-4 Department of Agriculture Application Approval Letter, dated February 1, 2012
- R-5 Child and Adult Care Food Program 2012 Renewal Package – Sponsor Management Plan Estimating Maximum Reimbursement Assessment
- R-6 Department of Agriculture Appointment Review Letter with attachments, dated May 23, 2012 for Appointment on June 12, 2012
- R-7 (a) Child and Adult Care Food Program Administrative Review Form with Addendum, for June 12, 2012, Review
- (b) Child and Adult Care Food Program Site Review Form with attachments A, B, C, for June 12, 2012, Review
- R-8 15<sup>th</sup> Street Kiddie Corner DCC Chronological Listing of Events
- Not Admitted**
- R-9 Child Care Food Program 0 Schedule A Training for Sponsors, dated November 18, 2009
- R-10 Training Sign-In Sheet for August 26 and 27, 2010
- R-11 Seriously Deficient Notice from Department of Agriculture to Agency Principals, dated August 16, 2012
- R-12 (a) State of New Jersey Business Registration Certificate, effective August 31, 2000, Issuance August 8, 2012
- (b) CACFP Annual Staff Training Documentation
- (c) Parent Notification Form for Infant Meal Requirements
- R-13 (a) State of New Jersey Business Registration Certificate, effective August 31, 2000, Issuance August 8, 2012
- (b) Parent Notification Form
- (c) CACFP Annual Staff Training Documentation, dated August 10, 2012
- (d) List of CACFD Documents Available On-line
- (e) Infant Menu – Lopez
- (f) Infant Menu – Ponce
- R-14 Notice of Intent to Terminate Letter from Department of Agriculture to Agency Principals, dated October 3, 2012
- R-15 Department of Agriculture Appointment Letter, dated August 12, 2009, to Fidela Mercedes for an Administrative Review on September 9, 2009
- R-16 Department of Agriculture Summary Letter of Overall Findings (Deficiencies

and Corrective Actions Necessary for Program Compliance) resulting from the Administrative Review conducted on September 11 and 18, 2009

R-17 Department of Agriculture Warning Letter to Complete Corrective Actions by Wednesday November 18, 2009, dated November 9, 2009

R-18 Department of Agriculture Warning Letter to Complete Corrective Actions by Friday December 11, 2009, dated November 23, 2009

R-19 Department of Agriculture Letter Confirming Adequate Correction of Deficiencies Resulting in Compliance of Program Regulations, dated April 1, 2010