

Provider Serious Deficiency and Termination Policy and Procedures (As approved by ADE 2014)

BJ Enterprises gives every reasonable opportunity for the provider to correct the problems. *BJ Enterprises* also provides additional training and technical assistance to the provider if applicable.

Corrective action procedures may take into consideration the following special extenuating circumstances: new participants on the program, language barriers and literacy barriers, or other documented special circumstances. These circumstances may require extra technical assistance. Technical assistance may continue as long as providers are showing improvement. Documentation must indicate when the provider has completed corrective action or, if no improvement is made, the provider may be declared seriously deficient.

There are three ways for a provider to terminate from CACFP:

1. **Provider's request.** Reasons for a provider requesting termination of their agreement may include:
 - No longer doing child care,
 - No longer wants to participate in CACFP,

Wants to change SO's. **This is considered a transfer, not a termination.**

2. **Convenience** of the Sponsoring Organization. Reasons for dropping a home for convenience may include:
 - Inaccessibility of the home.
 - *BJ Enterprises* financial and geographic considerations.
 - *BJ Enterprises* cannot meet the needs of the provider.
 - Any other reason of convenience.

A provider dropped for convenience may subsequently enroll with another SO.

Before dropping a home for cause, the provider must be given every reasonable opportunity to correct problems and be given additional training and technical assistance by the *BJ Enterprises*.

3. **Cause:** *BJ Enterprises* will drop a provider for cause if they have been deemed seriously deficient and failed to complete the corrective action specified in the written corrective action plan or failed to permanently correct a previous deficiency. Once a corrective action plan has been assigned, she must be given adequate time to complete the corrective action. The time frame may be determined by the staff and can vary from problem to problem, but should not exceed 30 days.

The following process must be followed if the SO is terminating a provider for cause unless:

- Failure of the provider to pass the fingerprint check.
- A revoked DES or DHS certificate.
- A substantiated Child Protective Services (CPS) complaint.
- Substantiated fraud by a federal or state agency other than the Arizona Department of Education (ADE).

As described in 7 CFR § 226.16(1)(2), the sponsoring organization must initiate action to terminate the agreement of a day care home for cause if the sponsoring organization determines that the day care home has committed one or more of the following serious deficiencies and corrective action has not been completed by the deadline:

- (i) Submission of false information on CACFP applications
- (ii) Submission of false claims for reimbursement
- (iii) Simultaneous participation under more than one sponsoring organization
- (iv) Non-compliance with the CACFP meal pattern
- (v) Failure to keep required records
- (vi) Conduct or conditions that threaten the safety of a child(ren) in care, or the public health or safety (imminent threat to health and safety)
- (vii) Day care provider has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity. A lack of business integrity includes fraud, anti-trust 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 the concealment of such a conviction
- (viii) Failure to participate in training
- (ix) Any other circumstance related to non-performance under the sponsoring organization-day care home agreement, as specified by the sponsoring organization or the State agency

Serious Deficiency Process

The following are the steps in the Serious Deficiency Process for *BJ Enterprises Family Child Care Homes*:

BJ Enterprises will determine whether a specific problem rises to the level of serious deficiency based on:

- type of problem
- severity of the problem
- frequency of the problem

BJ Enterprise's staff will follow the " *BJ Enterprises Corrective Action Policy & Procedures*" and will determine the threshold for a serious deficiency on an individual basis as determined by the Director or Assistant Director.

If *BJ Enterprises* determines that the problem is a “serious deficiency”, the second step is to send the provider a written notice of serious deficiency (unless the serious deficiency constitutes an imminent threat to health or safety, in which case the sponsor must follow the procedures for suspension of participation for day care home (7 CFR § 226.16(l)(4)). A copy of the serious deficiency notice must be sent to ADE, within 30 days. The notice must:

- Inform the provider that she is seriously deficient
- Describe the nature of the serious deficiency, with a specific regulatory citation to § 226.16(l)(2) (listed above)
- Clearly describe the measurable corrective action the home must take
- Specify the deadline for corrective action, which must not exceed 30 days
- State that the serious deficiency is not subject to appeal
- State that failure to fully and permanently correct the serious deficiency by the deadline will result in the proposed termination of the home’s agreement and the proposed disqualification of the home and its principals
- State that the home’s voluntary termination of the agreement after having been declared seriously deficient will result in the home’s termination and disqualification.

At the end of the time frame specified, the SO determines whether the corrective action has been fully and permanently corrected. If the deficiency has been corrected *BJ Enterprises* will defer the serious deficiency and the provider can continue CACFP participation. *BJ Enterprises* will notify the provider that the determination of serious deficiency has been deferred within 30 days of receiving the corrective action within 30 days of the due date. A copy is sent to ADE.

An unannounced review should be conducted within 90 days to ensure corrective action has been implemented. This will be documented on the review form.

If the provider fails to implement timely corrective action to fully and permanently correct the serious deficiency, *BJ Enterprises* will issue a written notice of proposed termination and disqualification of the provider’s agreement. (A copy is sent to ADE)

This certified letter must include:

- Inform the provider that the sponsor is proposing to terminate the home’s agreement to participate in CACFP for cause, and to place the provider on the National Disqualified List
- Inform the provider of the procedures and timeframes for seeking an appeal;
- Inform the provider that they will continue to receive payment for valid claims submitted until the expiration of the timeframe for filing an appeal, or until the resolution of the appeal
- State that, if the provider does not appeal the proposed termination, the sponsor will terminate the home’s agreement for cause and send the provider’s name and other information to the State agency, for placement on the National Disqualified List

- State that the home's voluntary termination of the agreement after having received the notice of intent to terminate will still result in the home's formal termination and disqualification
- If the provider appeals, she is to be paid for any valid claims during the appeals process.
- If the provider requests an appeal within the required timeframes, *BJ Enterprises* will send the Appeals Board all materials and documents necessary for the board to make a determination before the appeal date. Once the appeal hearing has been completed, the appeals board will rule either in favor of the provider or Sponsor.
- If the Appeals Board rules in favor of the provider, *BJ Enterprises* will send the provider a notice withdrawing the proposed termination and disqualification. A copy is sent to ADE.
- However if any debt relating to the serious deficiency has not been repaid, the provider must repay the debt.

Agreement Termination and Disqualification

BJ Enterprises will immediately terminate the day care home's agreement and disqualify the provider when the administrative review (appeal) official upholds the sponsor's proposed termination and proposed disqualification. At the same time, the notice of termination and disqualification is issued to the provider and a copy sent to ADE, along with other information needed for placing the provider on the National Disqualified list.

If the provider does not request an administrative review, *BJ Enterprises* will immediately terminate the provider's agreement and disqualify the home when the opportunity to request the administrative review (appeal) expires. At the same time, the notice of termination and disqualification is issued to the provider and a copy sent to ADE, along with other information needed for placing the provider on the National Disqualified list.

If the provider self-terminates during the serious deficiency process, *BJ Enterprises* will immediately terminate the provider's agreement and disqualify the home. At the same time, the notice of termination and disqualification is issued to the provider and a copy sent to ADE, along with other information needed for placing the provider on the National Disqualified list.

(These procedures are written as per our understanding of ADE & USDA regulations, including but not exclusive of and not limited to. It was approved by ADE in 2014)