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STATE OF MINNESOTA DISTRICT COURT  
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT  
CASE TYPE: OTHER CIVIL

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FEEDING OUR FUTURE, Case No. 62-CV-20-5492

Plaintiff, The Honorable John H. Guthmann

v. MOTION HEARING

MINNESOTA DEPARTMENT OF OFFICIAL COURT TRANSCRIPT

EDUCATION,

Defendant.

\*\*\*\*\*

The above-entitled matter came on before the  
Honorable John H. Guthmann, District Court Judge, Ramsey  
County District Court, Second Judicial District, State of  
Minnesota, by Zoom during the COVID-19 Pandemic on  
Friday, April 30, 2021.

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REPORTED BY: Lori Morrow, RDR, RMR, RPR, CRR, CRC

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JUDICIAL  
BRANCH

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1 THE COURT: So they have now acted on all the  
2 applications apparently by denying them based upon the  
3 administrative process that's in place. What's your  
4 position?

5 MR. WATKINS: Twofold. First of all, again,  
6 you can't delay complying with a court order and then all  
7 of a sudden comply with it and say it's fine because I've  
8 complied with it now. So what the problem we have is  
9 that it took MDE in some cases up to a year, a year, to  
10 process applications that should have taken days. We've  
11 submitted a list saying in most cases it took over 90  
12 days. I also say that MDE is not telling the truth once  
13 again, your Honor. And we have a substantial  
14 disagreement about this. In 149 cases, MDE refused to  
15 allow us the right to apply. It did not deny our  
16 application, period. It refused to allow us to submit an  
17 application. There are 149 sites at least for whom we  
18 requested the right to submit an application. MDE denied  
19 us the right to submit the application. Now we are stuck  
20 in an unbelievable administrative purgatory. I'm going  
21 to have to challenge that through an administrative  
22 process. I'm going to lose there because it's run by the  
23 same people. I'm then going to have to go up to the  
24 Court of Appeals, and the Court of Appeals is going to  
25 say in nine to twelve months from now, yes, Feeding Our

RAMSEY COUNTY DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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1 Future, you're right, you should have been allowed to  
2 submit an application, so go back and submit your  
3 application that MDE absolutely refused to allow to you  
4 submit. And then I'm going to be another nine months or  
5 so before we finally get that sorted out. So it's an  
6 absolute violation of the Court order to take 150 days  
7 and counting to consider the applications. I don't care  
8 if you finally issue the denials the eve of the hearing.  
9 It's an absolute violation of the Court order to take 150  
10 days.

11 Second, they didn't deny applications. They  
12 denied the right to apply. In 149 instances, they said  
13 we are denying you the right to apply. We are denying  
14 what's called a site ID request. Without a site ID, we  
15 physically are incapable of submitting the site  
16 application. They do not have applications for 149  
17 people, and they have been denied.

18 THE COURT: Which affidavit is that documented  
19 in?

20 MR. WATKINS: In terms of what, your Honor? In  
21 terms of the fact that they denied us this site  
22 application --

23 THE COURT: Yeah.

24 MR. WATKINS: Site ID?

25 THE COURT: The motion record. Which affidavit

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1 documents what you just said?

2 MR. WATKINS: I'll have to review the  
3 application of Ms. Bock. But this isn't even -- this  
4 shouldn't even be in dispute. Rule 11 wouldn't allow  
5 this to be in dispute.

6 THE COURT: A motion has to be supported by an  
7 affidavit. You can't just argue that 149 applications  
8 were denied. If I have an affidavit from somebody  
9 attesting to the fact that 149 applications were denied,  
10 then that's something I can consider.

11 MR. WATKINS: Paragraph 5 of Ms. Bock's  
12 affidavit mentions it as well, your Honor. And  
13 Exhibit 1, it says, "is a true and correct copy of  
14 applications Feeding Our Future has pending with MDE.  
15 The chart shows the date the application was submitted  
16 and the number of days it's been pending without a final  
17 determination." But it was only -- when we filed this  
18 motion, MDE hadn't taken any action. It was subsequent  
19 to the motion that they issued the denial. So we didn't  
20 have a basis to respond to that or the ability to respond  
21 to that, so we've got Ms. Bock here ready to testify. I  
22 can show you MDE's letter. There's really no dispute  
23 about it. But 149 of their denials were denials of the  
24 right to apply.

25 THE COURT: If Ms. Nogosek disputes that as a

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1 fact of record, we may have to take testimony.

2 MR. WATKINS: We'll be happy to present the  
3 testimony. We have exhibits as well we can use. MDE's  
4 emails show that. MDE's correspondence shows that. I  
5 can walk you through the CLiCS system and show the Court  
6 exactly how it works. It's really straightforward. It's  
7 really clear. You cannot submit an application without  
8 going through CLiCS. You can't go through CLiCS without  
9 a site ID. They wouldn't allow us to go through CLiCS to  
10 submit an application.

11 THE COURT: The denials that have now since  
12 come in between the previous motion date and today, did  
13 those denials contain a statement of why the application  
14 is incorrect or incomplete and what the basis for the  
15 denial is?

16 MR. WATKINS: So, your Honor, I can show you on  
17 a share screen what the letter is, or I can describe it.

18 THE COURT: Why don't you just throw it up on  
19 the screen.

20 MR. WATKINS: With the Court's permission, I'll  
21 share now. So please let me know when you can see my  
22 screen, your Honor.

23 THE COURT: I see it.

24 MR. WATKINS: Okay. So, your Honor, what I'm  
25 showing you is a letter that was sent yesterday to

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1 Feeding Our Future. And here's what it says, is it goes  
2 through and says they are denying everything pending now,  
3 and they say they're denying it for these two reasons:  
4 Basically, because there's a notice of serious  
5 deficiency, which is a ridiculous pretext but neither  
6 here nor there. So they state these two reasons. Now,  
7 what's important about this letter as well, your Honor,  
8 is it's what the site status says. It's site ID  
9 requested is what's being denied. It's a site ID  
10 request. And if you go through, it's 149 of them are  
11 site ID requests. When you get to the end of the letter,  
12 there's a few of them that are site applications  
13 submitted. So the Court can see from MDE's own letter  
14 that was given to us yesterday that they are denying our  
15 requests for site IDs as well as our actual applications.  
16 So 149 are site ID requests. The rest are applications.  
17 So in all of these cases -- and this is a good example  
18 because this was specifically mentioned in our brief,  
19 your Honor. This is a House of Refuge Outreach. We got  
20 a call from a state representative asking us to help this  
21 particular non-profit organization in Minneapolis  
22 participate in the food program. We got a personal phone  
23 call from a state rep saying can you help. Our  
24 organization said yes. We submitted a site ID request.  
25 We said, MDE, we would like to submit an application on

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1 behalf of House of Refuge Outreach. Because a state  
2 representative had told us this was a personally  
3 important matter, we wanted to address it. The response  
4 from MDE as of yesterday is to deny us that right. They  
5 have now issued a denial. They have said to us, you  
6 cannot get a site ID, so you cannot submit an application  
7 for that site. And that is why the denial is the site ID  
8 request. The denial is not site application submitted.  
9 No application was submitted.

10 THE COURT: And under your understanding of  
11 your right to appeal, do you have a right to appeal a  
12 site ID request denial, or do you only have a right to  
13 appeal a denial of an application?

14 MR. WATKINS: So, your Honor, it's -- what they  
15 have said is this is an appealable action, so they have  
16 said that there's an administrative appellate right here.  
17 The problem --

18 THE COURT: Okay.

19 MR. WATKINS: -- I have is that that's not  
20 clear at all from anywhere. But far more importantly,  
21 what is the Court of Appeals going to say? I'm going to  
22 spend nine months, \$100,000 going through and appealing  
23 the denial of the site ID request. The Court of Appeals  
24 is going to say that decision is completely wrong, and  
25 they're going to say you have the right to apply

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1 because --

2 THE COURT: Please stop sharing. Okay?

3 MR. WATKINS: Okay.

4 THE COURT: Thank you. That -- I just wanted  
5 that so I could poke around my other stuff.

6 MR. WATKINS: No, I'm sorry about that. I can  
7 stop.

8 But, your Honor, so that's the concern that  
9 we've got. So if I go up on appeal and when I go up on  
10 appeal and when I get the Court of Appeals to flip this,  
11 they're going to say the denial of the site ID request  
12 was inappropriate, it was arbitrary and capricious, and  
13 it violated law. The remedy for that is the ability to  
14 submit an application. I shouldn't have to go through  
15 the Court of Appeals to get to that point. I'm at that  
16 point. I have a court order requiring them to allow me  
17 to submit applications. They have not allowed me to  
18 submit an application for 149 sites. They have made a  
19 decision that they will not allow me to submit a site ID  
20 request or submit an application. That is beyond  
21 infuriating. We now have no ability to appeal it. We  
22 have no ability to create a final administrative record  
23 on what the decision was because they didn't even have  
24 our application. How can I prove to the Court of Appeals  
25 we meet all the requirements to be a site when I haven't

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1 been able to submit those to MDE yet? It's not part  
2 of --

3 THE COURT: Okay. I got it.

4 Ms. Nogosek.

5 MS. NOGOSEK: Let me make sure I am not muted.  
6 Okay.

7 Your Honor, I think I'm going to start like I  
8 did last time with going through some of the facts about  
9 things that Mr. Watkins has said to the Court today. And  
10 I think the Court, first of all, has really picked up on  
11 the fact that much of the argument that Mr. Watkins has  
12 made to the Court is not in the record. The testimony of  
13 Ms. Bock, the letter that he has put up on the screen,  
14 none of that is in the court's record. What we do have  
15 in the court record is that MDE has agreed to stop  
16 payment on Feeding Our Future's claims. And  
17 notwithstanding the fact that MDE imposed some additional  
18 conditions, not because Feeding Our Future is servicing  
19 minority communities but because Feeding Our Future is in  
20 serious deficiency, and there are serious deficiencies  
21 proceedings, actually two of them, ongoing at the  
22 administrative review process. That process will go up  
23 to the Court of Appeals. I'm assuming the denial of the  
24 applications is going to be a third administrative review  
25 that will go up to the Court of Appeals. But what we

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1 have here is the only thing in the record in front of the  
2 Court is the testimony of Ms. Honer that says MDE has  
3 removed the stop payment. Feeding Our Future hasn't put  
4 in the record, and I don't think Feeding Our Future can  
5 put in the record, that any of its claims are outside of  
6 the 45 days. And I do --

7 THE COURT: What's your answer to the voluntary  
8 cessation doctrine?

9 MS. NOGOSEK: My answer to that, your Honor,  
10 without having time to have looked at those cases because  
11 I got Mr. Watkins' brief about an hour and a half before  
12 the hearing and haven't gone through his cases, is that  
13 in this case -- and I don't know what the facts of the  
14 other cases are. But MDE at the time that the motion was  
15 brought -- or the renewed motion was brought is not in  
16 violation of the Court's interpretation of the federal  
17 regulations. There would be no reason to issue an  
18 injunction that precluded MDE from doing what -- or  
19 from -- precluding MDE from doing something that MDE has  
20 already said that it isn't doing. And when you look --  
21 and the 45 days is important, but the other language in  
22 226.7(k) that I think is equally important, and it is  
23 requiring that MDE have a claim process in place. Now,  
24 nothing in 226.7(k) requires that the process be  
25 administered equally among all sponsors. So MDE's

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1 position is that for those sponsors that are not in  
2 serious deficiency that the normal processing of claims  
3 applies. But for seriously deficient sponsors, such as  
4 Feeding Our Future and others, there should be a  
5 temporary stop pay to allow for validation of the claims.

6 Now, when you look at 226.7(k), that regulation  
7 itself says that the state must include checks,  
8 including, but not limited to, ensuring that payments are  
9 made only for approved meal types and that the number of  
10 meals for which reimbursement is provided does not exceed  
11 the product of the total enrollment times operating days  
12 times approved meal types, and that all valid claims  
13 shall be paid within 45 days of receipt.

14 THE COURT: Okay. Let me --

15 MS. NOGOSEK: That statute --

16 THE COURT: Hold on. Hold on just a second. I  
17 have it up here. Give me a chance to read it at my pace.

18 (Pause.)

19 THE COURT: So what provision here allows you  
20 to temporarily stop processing claims?

21 MS. NOGOSEK: Your Honor, this is not what MDE  
22 is relying on to say that it could stop -- or it could  
23 remove Feeding Our Future from the normal claim  
24 processing. We cited --

25 THE COURT: What are you relying on?

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1 MS. NOGOSEK: -- the regulations which the  
2 Court --

3 THE COURT: Are you relying on the same  
4 regulation we talked about last time?

5 MS. NOGOSEK: Well, your Honor, I think it's  
6 important, and I think I've confused the Court. MDE is  
7 not claiming and is not continuing the stop pay on --

8 THE COURT: Okay.

9 MS. NOGOSEK: -- Feeding Our Future's claims.

10 THE COURT: Okay.

11 MS. NOGOSEK: So if I've confused the Court by  
12 reading into the record 226.7(k), that wasn't my intent.

13 THE COURT: No, but 7(k) doesn't really say  
14 anything about stop pay. It says --

15 MS. NOGOSEK: Right.

16 THE COURT: -- that within 15 calendar days of  
17 receiving an incomplete or incorrect claim, you have to  
18 notify them of what they have to do and what they have to  
19 revise in order to get paid. And if you do disallow a  
20 full claim, you have to notify them of the right of  
21 appeal. So the way I'm reading this is that if I get --  
22 if you get a claim on day one, and you think that there  
23 is something incomplete about it or incorrect about it  
24 that has to be revised, then you tell them within 15  
25 days, and then that is still going to be clicking on the

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1 45-day total. Am I reading that correctly? So you're  
2 doing this on day 15. Now there's 30 days left, and  
3 they're going to have to get you this new information.  
4 And if they don't get it to you, then you can deny the  
5 claim because they didn't get you the new information  
6 within 45 days, or 30 more days. Is that all accurate?

7 MS. NOGOSEK: That would be my understanding of  
8 this particular regulation.

9 THE COURT: Okay. Now, the disconnect that I  
10 have is that the grounds that I've previously read in  
11 your letters for taking the actions that you've taken are  
12 not claim specific reasons. They're more institutional  
13 reasons, the fact that they don't have an auditor or  
14 their non-profit status wasn't verified for a certain  
15 period of time. So the rule that you're looking at seems  
16 to carry a presumption that the denial would have to be  
17 something specific to the actual claim rather than some  
18 broader basis for denial. Am I missing something there?

19 MS. NOGOSEK: No, I don't think you're missing  
20 anything there, your Honor. But again, to make the  
21 department's position clear, the department has not  
22 denied any of the reimbursement meal claims.

23 THE COURT: Okay. And you also haven't given  
24 them notice of any -- you haven't given them a 15-day  
25 notice for any of these claims either for incomplete or

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1 incorrect claims. Is that correct?

2 MS. NOGOSEK: I don't know. I can't -- I don't  
3 think so, but I'm not certain of that, your Honor.

4 THE COURT: Okay. So if they didn't get a  
5 notification from you that there was something wrong with  
6 an individual claim within 15 days, this particular  
7 federal regulation would indicate you've got to pay it  
8 within the 45.

9 MS. NOGOSEK: I think that's a correct reading  
10 of that regulation, yes.

11 THE COURT: Okay. Continue.

12 MS. NOGOSEK: Okay.

13 So, your Honor, I just want to wrap up my  
14 comments about the injunction regarding the meal claims.  
15 I don't think that a injunction is warranted here. You  
16 know, I know the Court is concerned about, I think you  
17 called it an elephant, about procedurally whether this is  
18 before the Court, but -- and I'll come back to that  
19 because you said it's an elephant, and I want to talk to  
20 you about what you find to be the elephant in the room.  
21 But it's not necessary to issue an injunction. It's not  
22 warranted. The Department of Education is not close to  
23 45 days, as Feeding Our Future's counsel has admitted.  
24 And the only information before the Court is that the  
25 Department of Education has removed that stop pay, and

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1 that payment is going to be made, and I do believe it's  
2 going to be made within the 45 days, and that if Feeding  
3 Our Future were to look on the CLiCS system, that it's  
4 going to see somewhere after 5:00 p.m. tonight that its  
5 claims, along with every other sponsors' claims, is going  
6 to show that it's going to be paid Thursday or Friday of  
7 next week, so ...

8 And then talking about the elephant in the  
9 room, your Honor, the Department of Education will be  
10 filing a motion opposing both the first and the second  
11 amended complaint. It's a little unclear to me whether  
12 that will be a complete opposition or only a partial  
13 opposition. But Mr. Watkins has not gone through the  
14 formal process of obtaining leave needed by Rule 15 for  
15 his client to amend its complaint. And I think it's  
16 important that, to the extent Feeding Our Future wants  
17 everyone, especially the Department of Education, to  
18 comply with rules and regulations, that Feeding Our  
19 Future should also comply with rules that apply to  
20 litigation.

21 THE COURT: Just a second.

22 MS. NOGOSEK: Sure.

23 THE COURT: I want to check something.

24 (Pause.)

25 THE COURT: So then how do you answer the --

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1 I'll concede it's more of a practical question of how we  
2 got here procedurally. He could have brought -- he could  
3 have served this on you as a new lawsuit and could have  
4 gone forward with this hearing today without any claim --  
5 without any valid ability for you to claim that I don't  
6 have jurisdiction for the issue to be presented on its  
7 merits versus bringing a motion to amend.

8 MS. NOGOSEK: Well, number one, that's not what  
9 he did. Number two, I'm not sure. I would have to look  
10 at the dismissal rules. I haven't done that in a while.  
11 But I believe after, you know, the defendant has  
12 answered, the plaintiff cannot voluntarily dismiss and  
13 refile --

14 THE COURT: Oh, no. He could have started a  
15 second lawsuit, and it could have not overlapped with the  
16 first lawsuit. He could have -- all the new stuff, let's  
17 call it new stuff, all the new stuff could have simply  
18 been separated into a separate complaint with largely the  
19 same factual allegations but different causes of action.  
20 And he could have served that on you last week, maybe on  
21 the same day he served his motion to amend, let's say  
22 hypothetically, and with the TRO motion, and we would  
23 have scheduled it on an expedited basis, because that's  
24 what we do. And we have a rotation in the civil judges  
25 if they don't already have the case, and they hopefully

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1 would have noticed that Guthmann's got the first case and  
2 it looks related, so we better give it to Guthmann and  
3 give poor Judge Guthmann credit for a TRO. Now you know  
4 our internal process. And then you wouldn't have been in  
5 a position to make this argument, and you probably would  
6 have brought a motion to consolidate the two complaints  
7 down the road.

8 So now what do you say?

9 MS. NOGOSEK: Your Honor, I guess I go back to  
10 that's not what Feeding Our Future did. I mean, I don't  
11 want to play got you with Feeding Our Future. But, you  
12 know, if it wants to amend its complaint, it has to go  
13 through the process, the proper channels to amend its  
14 complaint. If it wants to get relief from the Court  
15 sooner than it's going to get by following Rule 15, then  
16 it needs to act differently. But that's not what Feeding  
17 Our Future did. Feeding Our Future has now filed --  
18 filed without briefing, and I'm not sure yet if the  
19 second amended complaint has a motion, a notice of motion  
20 with it, but neither of those amended complaints have  
21 been briefed, have been scheduled for hearing, or have  
22 been argued by either side. So my answer goes back to  
23 Feeding Our Future didn't follow the rules. And while,  
24 you know, the Court probably could substantively deny the  
25 motion as not having jurisdiction, if you don't want to

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1 go that route, your Honor, I still think the Court has  
2 ample reason to deny the injunction motion because  
3 Feeding -- or I'm sorry, MDE has heard the Court's  
4 interpretation of the statutes or regulations that I  
5 cited to you last meeting and has taken the stop pay not  
6 only on all Feeding Our Future's claims but on all other  
7 seriously deficient sponsors, and those sponsors' claims  
8 are being processed in the normal course.

9 THE COURT: What is your position on the  
10 April 29 letter listing the applications and -- with 149  
11 that say "site ID denied" and an indeterminate number,  
12 because I didn't have time to count them, that says  
13 "application denied"? Why shouldn't I conclude that for  
14 the 149 where a site ID was denied that you violated the  
15 stipulation and order that I issued last fall?

16 MS. NOGOSEK: For the sites where the -- where  
17 Feeding Our Future had provided MDE with documentation to  
18 show that the site is, quote, eligible, because that's  
19 the process of having MDE declare that the particular  
20 sites, meaning it's within the proper location, that the  
21 household income of the families is below a certain  
22 level, that it meets all the regulations for, quote,  
23 eligible site under the rule, that is the site ID  
24 request.

25 What is referred to then for the -- I'm sorry,

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1 the sites where it says "site application submitted,"  
2 that's the meal plan. So in order -- the approval  
3 requires an analysis of whether the site is eligible to  
4 make sure that the sponsor and the site location is going  
5 to serve the proper meals, meaning does it have the  
6 proper dietary content, does it have enough fruit, does  
7 it, you know, not have enough -- you know, doesn't have  
8 too much sugar, doesn't have too much fat. I mean,  
9 it's --

10 THE COURT: Isn't that part of the application,  
11 not the site ID request?

12 MS. NOGOSEK: Right. So think of it this way,  
13 your Honor.

14 THE COURT: What's it take to --

15 MS. NOGOSEK: And I -- I'm sorry.

16 THE COURT: What's it take to get a site ID?

17 MS. NOGOSEK: Submitting the location address  
18 and other information that allows MDE to determine that  
19 the site is eligible.

20 THE COURT: And so if you determine that the  
21 site is not eligible, you can deny the site ID request,  
22 and that is appealable?

23 MS. NOGOSEK: That is my interpretation of the  
24 regulations, yes. It is --

25 THE COURT: And for each individual decision

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1 for each of these 149 plus sites, did you provide a  
2 statement of why the site ID request or application was  
3 incorrect or incomplete, which is what the order  
4 requires?

5 MS. NOGOSEK: Right. And, your Honor, the  
6 Department of Education I don't believe -- just based on  
7 this letter that I'm looking at here that was emailed to  
8 me during the hearing from my client, it looks like the  
9 Department of Education is again going on the argument  
10 that it made in its first response to the motion for  
11 contempt, is that by federal regulations, the site  
12 applicant, so Feeding Our Future, has to certify that it  
13 is in conformance with the performance standards, and we  
14 all know that there's these serious deficiency  
15 proceedings going on, as to whether or not Feeding Our  
16 Future is in serious deficiency of the performance  
17 standards.

18 THE COURT: Is that sort of --

19 MS. NOGOSEK: That's when --

20 THE COURT: -- information required in the  
21 application, or is it required when requesting a site ID?

22 MS. NOGOSEK: That I don't know, your Honor.

23 THE COURT: Okay. Right. The problem is is  
24 that there's an order in place, and the order has to be  
25 complied with. The order requires an individual site

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1 specific statement by the department of what about this  
2 application is incorrect and complete -- or incomplete  
3 and to offer technical assistance that might be  
4 appropriate to correct or complete the application. And  
5 if you didn't do that, you're in contempt.

6 MS. NOGOSEK: Your Honor, bear with me here,  
7 because I'm trying to find the declaration of Monica  
8 Herrera.

9 Here it is. So, your Honor, I think we're  
10 going to have to look at actually both declarations that  
11 MDE has filed in these motions. But before we get to  
12 these declarations, I want to point out that Feeding Our  
13 Future has not provided any testimony to the Court that  
14 all of these sites that were denied were correct and  
15 complete. And I want to start with Emily Honer's  
16 affidavit --

17 THE COURT: Which one?

18 MS. NOGOSEK: -- where -- pardon me?

19 THE COURT: Which --

20 MS. NOGOSEK: It was filed yesterday at 9:04.

21 THE COURT: You filed two of them. The one --

22 MS. NOGOSEK: Oh, I'm sorry.

23 THE COURT: The one with eight paragraphs or  
24 the one with --

25 MR. WATKINS: The second affidavit. It was

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1 filed to supplement those missing pages in the first  
2 filing.

3 THE COURT: Oh, okay. All right.

4 MR. WATKINS: The second one is the one that  
5 we're looking at, your Honor.

6 THE COURT: All right.

7 MS. NOGOSEK: The one for today. So in  
8 paragraph 6 of Ms. Honer's declaration, she talks about  
9 how several of the sites on Exhibit 2 to Ms. Bock's  
10 declaration -- or affidavit, that there were  
11 inaccuracies, and -- okay. So we don't know whether  
12 absent these serious deficiencies these applications were  
13 correct and complete. Certainly, it's the department's  
14 position that they were not correct and complete. And  
15 then the other way that we know that, your Honor, is that  
16 if we go to the -- I believe it is the second serious  
17 deficiency letter, your Honor, so we are now in the  
18 declaration of Monica Herrera, which is sequentially  
19 numbered through the exhibits. And if you look at pages  
20 60 through 63, it talks about the fact that the, you  
21 know, that the serious deficiency -- outlined what the  
22 serious deficiencies are, that Feeding Our Future has to  
23 submit a corrective action plan, and has to do that  
24 actually by today. And I just factually don't know if  
25 Feeding Our Future has done that. But this tells Feeding

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1 Our Future what needs to be done to cure any problem with  
2 an incomplete or incorrect site application because of  
3 these serious deficiencies.

4 The other thing we can glean from this  
5 particular serious deficiency letter is that in one of  
6 the performance standards, there were significant  
7 inaccuracies, I think 24 percent. And, I'm sorry, it's  
8 not jumping out at me, but that the site applications  
9 that Feeding Our Future was submitting had significant  
10 errors in them that was causing the department to really  
11 question whether or not Feeding Our Future had the  
12 ability to run its business and run its program.

13 THE COURT: Well, that's fine then. So I would  
14 expect that your denial of the individual applications  
15 would specifically reference the letter and say exactly  
16 what is needed to fix it if the letter doesn't, because  
17 that's what the order requires you to do.

18 MS. NOGOSEK: I'm sorry, your Honor. I'm  
19 pulling up the order now.

20 THE COURT: Okay. The order says, "MDE will  
21 approve or disapprove applications that are correct and  
22 complete in a reasonably prompt manner. If MDE receives  
23 an application that it believes is incomplete or  
24 incorrect, it will notify Feeding Our Future why it  
25 believes it's incomplete or incorrect and will provide

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1 Feeding Our Future any technical assistance that might be  
2 appropriate to correct or complete the application."

3 So that creates an application specific  
4 obligation to tell Feeding Our Future why it was denied  
5 and to offer assistance on repairing the grounds for  
6 denial. And that would be required for each application.  
7 So that would include a site ID request, which is part of  
8 the application process, or the application that they  
9 submit after they get a site ID. And if you can't  
10 demonstrate that you've done that with every single one,  
11 you've violated my order, as I directed -- and I directed  
12 you last time to comply with my order as it relates to  
13 applications, and you indicated you would and that it was  
14 agreed that a further order by me wasn't necessary.

15 MS. NOGOSEK: Your Honor, I -- factually, I  
16 think the department has complied with the Court's order,  
17 because not only were there communications going between  
18 Feeding Our Future and MDE when there were problems and  
19 inaccuracies, but the corrective -- I'm sorry. The  
20 serious deficiency letter told Feeding Our Future how it  
21 needs -- what it needs to do to comply or to remove those  
22 serious deficiencies. Now, that hasn't been done.

23 The other thing we don't have in the  
24 record is --

25 THE COURT: The problem with that is that the

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1 deficiency letter was directed towards Feeding Our  
2 Future. It was not specific to any particular  
3 application for approval. So that's not what you agreed  
4 to do. That's not what was in the stipulation and order,  
5 so you can't amend my order on your own. You can't  
6 create a new procedure when you're under an order. You  
7 follow the order, which is what we discussed last time.  
8 So some letter that you wrote in January or in March that  
9 wasn't specific to any application that they had  
10 submitted is per se inadequate to support a denial of  
11 anything. Every single individual application has to be  
12 treated consistent with the order. I didn't just order  
13 this. You stipulated to it. You can't --

14 MS. NOGOSEK: And --

15 THE COURT: -- unilaterally change it.

16 MS. NOGOSEK: -- your Honor, I just strongly  
17 disagree with the Court's position on this. I think MDE  
18 has complied with the Court's order.

19 THE COURT: Okay. I'm going --

20 MS. NOGOSEK: It gives MDE --

21 THE COURT: I'm going to issue an order, and  
22 I'm going to order you to demonstrate your compliance.  
23 And I will tell you what compliance means. Compliance  
24 means that you individually communicated -- and you can  
25 do -- you could have done it all in one letter. If you

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1 think this April 29 letter is compliance, you can explain  
2 why. Either individually or in one really big letter for  
3 each application, explain what the order requires you to  
4 explain, why it believes that application was incomplete  
5 or incorrect, what about that application was deficient,  
6 and how you can help eliminate the deficiency, which is  
7 something you also agreed to be ordered to do.

8 You know, it's pretty simple. And, you know,  
9 if you denied a site ID request, there's nothing about  
10 your January or March letters that addressed any of the  
11 grounds that you listed as being grounds for denying a  
12 site ID request. That's never been any -- that's never  
13 been a deficiency that you listed in those letters. So  
14 if there's something about the site that makes it  
15 ineligible to get a site ID, you have to individualize  
16 that and say here's why we denied the site ID. Nothing I  
17 saw in that April 29 letter addressed any individual  
18 grounds for denying any of the 149 site IDs, that they --

19 MS. NOGOSEK: Your Honor, I --

20 THE COURT: -- don't meet the income  
21 requirements or there's something wrong with the number  
22 of meals. I didn't see that in any of the deficiencies  
23 that you cited, and you didn't mention it in the letter.  
24 So I'm at a loss to understand why you were denying site  
25 IDs.

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1 MS. NOGOSEK: Your Honor, the Court's order  
2 specifically allows the department to disapprove  
3 applications as well.

4 THE COURT: Yes, on the condition that you  
5 state what's wrong with it. "It will notify Feeding Our  
6 Future why it believes the application is incorrect or  
7 incomplete and will provide Feeding Our Future any  
8 technical assistance that might be appropriate." And I  
9 have yet to be shown any reason why you denied a site ID  
10 because nothing in your previous letters about seriously  
11 deficient conduct by Feeding Our Future was in your list  
12 of grounds to deny a site ID.

13 MS. NOGOSEK: Your Honor, then --

14 THE COURT: Go ahead.

15 MS. NOGOSEK: -- can -- I'm struggling here  
16 because -- well, obviously, because the Department of  
17 Education doesn't think it has violated the Court's order  
18 and thinks that it has actually followed the federal  
19 regulations. And the order allows MDE to disapprove  
20 applications.

21 THE COURT: Correct.

22 MS. NOGOSEK: We've shown reasons why the  
23 applications were disapproved and --

24 THE COURT: You have not shown me any reason to  
25 deny a site ID request. You listed the grounds for

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1 denying site ID requests, and none of the grounds in your  
2 letters are consistent with the grounds you told me are  
3 grounds for denying a site ID request.

4 MS. NOGOSEK: Well, okay. Your Honor, you also  
5 have to understand, and I don't -- I don't have the  
6 regulations, but there are regulatory provisions that  
7 say, when applications are pending and there are serious  
8 deficiencies, that the applications can't -- that they  
9 have to be denied. And that's regulations under both the  
10 Summer Food, which is 225 of 7 CFR, and the CACFP, which  
11 is 226 of 7 CFR, so --

12 THE COURT: That's fine. You're allowed -- if  
13 that's true, then you're right, you're allowed to do it.  
14 But you can't do it silently. You can't just stamp it  
15 denied. You have to provide for each application -- if  
16 that's the reason, you have to say so. You haven't done  
17 that.

18 MS. NOGOSEK: Your Honor, in the April 29  
19 letter, which I understand the Court is at a disadvantage  
20 because it doesn't have this in the record, and I can  
21 certainly get it filed after the hearing for you.

22 THE COURT: Okay.

23 MS. NOGOSEK: But it does say that the state  
24 agency must deny applications for a serious deficient  
25 operation of any federal child nutrition program. That's

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1 number one.

2 THE COURT: What about --

3 MS. NOGOSEK: And then --

4 THE COURT: -- requests for a site ID, is that  
5 the same as an application?

6 MS. NOGOSEK: Yes. And again, I think some of  
7 the confusion is that an application requires approval  
8 that the site is eligible and that the meal plan meets  
9 criteria. The fact that the Department of Education's  
10 computer system only allows this CLiCS, the uploading of  
11 the meal plan criteria, but you do -- you get your site  
12 ID once you've shown that it meets eligibility  
13 requirements through a, you know, a different process,  
14 it's one application. It has to be an eligible site and  
15 an eligible meal plan.

16 THE COURT: Right. But if the eligible -- if  
17 documentation of whether it's an eligible site or  
18 eligible meal plan only comes in an application that you  
19 can't submit until you have a site ID, you've got a  
20 problem.

21 MS. NOGOSEK: No. We're getting --

22 THE COURT: I'm watching Mr. Watkins' head bob.  
23 I think he agreed with what I just said.

24 MS. NOGOSEK: No, your Honor. There is every  
25 ability for Feeding Our Future to submit the request for

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1 a site ID. There is no inability. It just -- it goes to  
2 a mailbox --

3 THE COURT: He just showed me a letter where  
4 you refused to give 149 site IDs that you issued  
5 yesterday.

6 MS. NOGOSEK: Right. What that means is that  
7 the application, you weren't -- you hadn't submitted your  
8 meal plan, but the application is denied. And so what  
9 this could have said --

10 THE COURT: No. No. He's saying that because  
11 he couldn't get an ID, he couldn't -- he never submitted  
12 the application. There was no application. There was no  
13 application because you wouldn't give him a site ID  
14 number, so you never got the application. That's what's  
15 been represented. And your letter that I was shown and  
16 was put on the screen distinguishes between "application  
17 denied" and "site ID denied." So I am interpreting your  
18 letter to say you prohibited them from submitting an  
19 application 149 times.

20 MS. NOGOSEK: Then, your Honor, I guess what  
21 we're going to have -- well, what I propose we do --

22 THE COURT: Okay.

23 MS. NOGOSEK: -- is for the Department of  
24 Education to go ahead and provide a formal copy, formally  
25 file this letter with the Court --

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1 THE COURT: Okay.

2 MS. NOGOSEK: -- and then provide the  
3 additional information about what it meant by, quote,  
4 site status. It seems to me that it is -- it is  
5 disingenuous to be arguing that because the Department of  
6 Education has said we're going to deny all of these 184  
7 sites, which they call a application. They don't break  
8 it up between site ID request and application. It  
9 specifically says, "Per federal regulation, the state  
10 agency cannot approve an application until successful  
11 corrective action corrects the serious deficiencies."  
12 And then it says --

13 THE COURT: Okay. Hold on. Hold on. There is  
14 no application. Those 149 cases never submitted  
15 applications because you wouldn't give them a site ID to  
16 allow them to do it. That's undisputed. So --

17 MS. NOGOSEK: Your Honor --

18 THE COURT: -- all the information they put in  
19 an application they couldn't give you because you  
20 wouldn't let them.

21 MS. NOGOSEK: But, your Honor, even if -- even  
22 if there was a site ID that was generated, if the only  
23 thing that Feeding Our Future uploaded to CLiCS was its  
24 meal plan, it's still not correct and complete because  
25 they haven't shown eligibility. The application is both

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1 eligibility and meal plan. The fact that --

2 THE COURT: Well, of course.

3 MS. NOGOSEK: Right. So the -- this is one  
4 application. It's not two applications, and it's not --

5 THE COURT: Well, the site --

6 MS. NOGOSEK: -- site ID --

7 THE COURT: The site ID is what allows them to  
8 get in your system to submit an application. That's  
9 what's been argued from day one.

10 MS. NOGOSEK: Your Honor, I think -- let me --  
11 let me back up, because I think --

12 THE COURT: Hold on just a second. I need a  
13 quick affirmation.

14 Mr. Watkins, am I right or am I wrong in your  
15 opinion?

16 Can't hear you.

17 MS. NOGOSEK: You're on mute.

18 MR. WATKINS: My apologies. Your Honor,  
19 absolutely correct. We cannot submit an application  
20 without a site ID, period, end of story. And,  
21 your Honor, I just want to point out, it's been driving  
22 me bonkers, but at the last hearing -- we have the  
23 transcript for it -- we discussed this very same issue,  
24 and --

25 THE COURT: Right.

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1 MR. WATKINS: -- the Court said -- I have a  
2 transcript. This is page 61, line 12.

3 "THE COURT: Ms. Nogosek, you cannot  
4 prevent them from submitting an application even if  
5 you are convinced it will be denied later. Okay?

6 "MS. NOGOSEK: Understood, your Honor."

7 Subsequent to that very conversation, they  
8 prevented us from submitting applications because they  
9 were convinced they were going to deny it later. We've  
10 been down this road.

11 THE COURT: Okay. So here's what we're going  
12 to do since we've gone an hour and a half and we need to  
13 conclude.

14 Ms. Nogosek, I'm going to consider the motion  
15 to amend, and I will consider your opposition. So we're  
16 going to take some middle ground. Rule 15 requires leave  
17 of court. I'm not going to require a brand new complaint  
18 to be filed, but I'm not going to dispense with rules.  
19 So, Ms. Nogosek, you're going to be allowed to file a  
20 brief opposing the motion to amend, and I'm going to  
21 allow a reply brief by Mr. Watkins on the motion to  
22 amend. We'll get into what day it's due in a minute.  
23 That's just -- we're just going to set up the process.

24 In the meantime, we'll treat this as an order  
25 to show cause. I want documentation of compliance with

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1 my order. So I want the 4/29 letter filed, and for each  
2 of the sites in that letter, I want you to state how you  
3 believe you've complied. And quite frankly, if you  
4 haven't allowed them to get a site ID to submit an  
5 application, you're in hot water, because I told you last  
6 time you can't do that. I told you last time you can't  
7 deny site IDs because they can't apply without one. And  
8 if you think that I got something wrong, you're going to  
9 have to demonstrate that as well, because, basically, the  
10 law of this case is that an application is separate from  
11 a site ID and that you can't submit a site ID -- or  
12 excuse me. You can't submit an application without first  
13 getting a site ID, and then once you get a site ID, you  
14 have access to the MDE system, and then you can submit an  
15 application, and that only the denial of an application  
16 triggers the appeal process, which means that Mr. Watkins  
17 could get to the Court of Appeals, and the Court of  
18 Appeals could say the appeal process wasn't triggered  
19 because they never submitted an application. And someone  
20 might have to show me what the difference -- what you do  
21 to get a site ID.

22 And, Mr. Watkins, you might have to explain to  
23 me how that's different than an application in your  
24 reply.

25 MR. WATKINS: Understood, your Honor.