



Via Email (if individuals' email addresses are known) and U.S. Mail

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Re: Youth Leadership Academy dba Gar Gaar Family Services Appeal of MDE-NPS Decision of Proposed Disqualification from the Child and Adult Care Food Program

¹ GGFS Appellants' December 2, 2022 Notice of Appeal states that they are not appealing the proposed disqualification of Mohamed Sharif Maruf because Mr. Maruf is not affiliated with the organization. *See infra*, COL, Subsection III.D. for a discussion regarding Mr. Maruf's status and notice of agency action upon him.

BACKGROUND

The Child and Adult Care Food Program (CACFP) is administered in the state of Minnesota by the Minnesota Department of Education – Nutrition Program Services (MDE-NPS). On November 18, 2022, MDE-NPS issued a decision proposing to disqualify Youth Leadership Academy dba Gar Gaar Family Services (GGFS) and six named responsible individuals from future CACFP participation pursuant to 7 C.F.R. § 226.6(c)(1)(iii)(C). (See MDE-NPS Nov. 18, 2022 Letter.)

On or about December 2, 2022, GGFS and five² of the six individual appellants (collectively, “GGFS appellants”) timely appealed MDE-NPS’s proposed disqualification decision.³ This decision is an appealable action under the CACFP appeal procedure, which references 7 C.F.R. § 226.6(k)(2). MDE provided GGFS appellants with the appeal procedure documents as attachments to its notices to GGFS appellants.

At GGFS’s request, a hearing was set for January 20, 2023 at 2:00 p.m. The due date for MDE Appeal Panel to issue its decision is February 13, 2023.⁴

Hearing on this appeal took place on January 20, 2023 at 2:00 p.m. At the hearing, Attorney Barbara Berens of the firm Berens & Miller appeared and spoke as counsel for GGFS. Attorney Sam Chapin of the firm Kennedy & Ruhsam Law Offices, P.A. also appeared and answered questions as needed. Mr. Chapin mainly handles GGFS’s transactional legal work. (Jan. 20, 2023 Hrg. Tr. 24:5–23.) Attorney Berens represents GGFS appellants in the administrative appeals. (*Id.*) Khadija Ali, Executive Director of GGFS, and Priya Morioka, COO/CFO of GGFS, also appeared at the hearing and made statements as to facts. Emily Honer, MDE’s Supervisor of Business Operations and Support Services, and Assistant Attorney General Marty Casserly, appeared and spoke on behalf of MDE-NPS. MDE-NPS’s CACFP Supervisor, Jeanette Johnson-Reed, answered questions when directed. MDE’s General Counsel, Eric Taubel; MDE’s Director of Nutrition Programs, Monica Herrera; and MDE’s Appeal Coordinator, Allison Loomis, also appeared at the hearing but did not make statements. Assistant Attorney General Kathleen Reitz appeared as counsel for MDE’s Appeal Panel.

MDE’s final determination follows.

² The six individual appellants are: Khadija Ali (Executive Director), Priya Morioka (Chief Operating Officer/Chief Financial Officer), Mark Ritchie (Board Member), DC Zeynep Tuzcu, (Board Member), Mohamed Horia (Site Representative), and Mohamed Sharif Maruf (Registered Agent). GGFS’s December 2, 2022 Notice of Appeal Letter states that it is not appealing the proposed disqualification of Mohamed Sharif Maruf as Mr. Maruf is not affiliated with GGFS. Because Mr. Maruf has not participated in the administrative appeal proceeding and has not stated his position, “GGFS Appellants” collectively refer to all the appellants except Mr. Maruf. See *infra*, COL, Subsection III.D. for a discussion regarding Mr. Maruf’s status and notice of agency action upon him.

³ The phrase “proposed termination of its agreement” on page 5 of MDE-NPS’s November 18, 2022 notice appears to be a stenographic error. (GGFS Ex. 1, at 1005.) The phrase is not seen anywhere else in the document and MDE-NPS confirmed at the hearing that the agency action is proposed disqualification only. (Jan. 20, 2023 Hrg. Tr. 27:12–28:4.)

⁴ February 11, 2023 falls on a Saturday.

DOCUMENTS REVIEWED

The CACFP procedure document provides: “[i]n order to be considered, written documentation must be submitted not later than 30 days after receipt of the notice of action.” MDE-NPS issued its notice proposing to disqualify GGFS and its responsible individuals on November 18, 2022. GGFS appellants appealed the decision on December 2, 2022. GGFS appellants’ written submissions were due December 19, 2022.

Both MDE-NPS and GGFS appellants submitted written documentation on or before December 19, 2022. On December 20, 2022, MDE-NPS submitted an additional small batch of four (4) documents to SharePoint—the platform for uploading administrative appeal record. On December 21, 2022, GGFS appellant submitted a letter to MDE’s Appeal Panel arguing that the four documents should not be considered by the Appeal Panel because they are untimely. These four documents are:

- Document #1: December 9, 2022 GGFS Letter to MDE-NPS’s Emily Honer, which encloses GGFS’s Preliminary Draft Audit Report prepared by the audit firm, Mazanec, Bauer, & Associates, P.L.C. (“Mazanec”)
- Document #2: 7 CFR Part 226 -- Child and Adult Care Food Program
- Document #3: Indictment in *United States v. Haji O. Salad, et al.*, Case No. 0:22-cr-00226-NEB-TNL (Dist. Minn., unsealed September 20, 2022)
- Document #4: MDE-NPS Appeal Summary and Timeline (“Summary”)

Document #1 appears identical to GGFS’s Exhibit 5. Exclusion of MDE-NPS’s submission of the same document is immaterial to this document’s presence in the administrative record through GGFS’s submission. Document #2 contains text of the federal regulations, which is available to the general public. Document #3 has been available to the general public since it was unsealed on September 20, 2022, of which the Appeal Panel may take judicial notice.

Document #4 should have been submitted by December 19, 2022. The CACFP Procedure provides that the deadline for written submissions is 30 days from the institution’s receipt of the notice of action. The notice of action is dated November 18, 2022 and the email dated November 18, 2022 indicates MDE-NPS sent it to GGFS via email on the same date. In other words, it is the date GGFS received the notice rather than MDE-NPS’s receipt of GGFS’s appeal request that dictates the computation of submission due date. Therefore, MDE-NPS’s explanation at the hearing that the agency “received the request for appeal late” and “thought that that pushed out the deadline to the 21st [of December]” does not establish good cause for admission of the Summary. In reaching the conclusions set forth in this panel decision, the Appeal Panel will not consider MDE-NPS’s Summary. Meanwhile, to the extent any information in the Summary can also be found elsewhere in the administrative record, that information may be considered by the Appeal Panel.

The Appeal Panel considered all the written submissions properly admitted before it. Because of the volume of the parties’ submissions, they are listed at the end of this determination letter and are incorporated by reference.

FINDINGS OF FACT

1. Where applicable, the Appeal Panel takes judicial notice of information from the administrative records of GGFS's previous administrative appeals with the agency.
2. Responsibility for correctly implementing the CACFP is given to state agencies. In Minnesota, MDE-NPS is the division in the responsible state agency designated to implement CACFP programming.
3. Institutions, including sponsoring organizations ("sponsors"), sign agreements with the relevant state agency and are responsible for overseeing program operations. *See generally* 7 C.F.R. §§ 226.6(b), 226.15, 226.16. Sponsors receive federal reimbursement from the state agency to cover administrative and operating costs of preparing and serving meals to eligible children and adults. 7 C.F.R. § 226.4(a). Sponsors are subject to detailed regulatory requirements regarding operations and are assessed against three core performance standards: financial viability and financial management, administrative capability, and program accountability. 7 C.F.R. § 226.6(c)(3)(ii)(C) (cross-referencing standards).
4. GGFS and MDE did not enter into a CACFP permanent agreement. (Apr. 28, 2022 Hrg. Tr. 26:11–25.) GGFS and MDE entered into a Summer Food Services Program (SFSP) permanent agreement, executed on June 30, 2021. (*See* GGSF SFSP Agreement.)

Procedural Background Up Until the May 23, 2022 Panel Decision

5. On December 14, 2021, MDE-NPS issued a letter setting forth a list of serious deficiencies and steps GGFS must follow to cure them ("Serious Deficiency Notice" or "the notice"). The notice states, in relevant part:

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

The enclosed CACFP Sponsor Application Review Findings provides additional details to the below findings:

1. The institution has engaged in unlawful practices, false and fraudulent claims, 7 CFR 226.6(c)(5)(ii)⁵.
 - a. Including but not limited to; [*sic*] the institution paid vendors whose business does not exist according to the Minnesota Secretary of State; the institution paid vendors for food who were not licensed to sell or distribute food; the institution did not withhold or pay payroll taxes; the institution used cashier's checks as primary means to pay bills; the organization cannot support all expense transactions represented on the bank statements.
 - b. The institution must provide the following documentation to correct the issues:
 - i. Food licenses and contracts for all vendors paid
 - ii. Proof of all vendors as a registered business with their corresponding regulatory agency

⁵ Where direct or block quotes are used, "CFR . . ." is not changed to "C.F.R. § . . ."

- iii. Proof of payroll withholdings for all staff paid
- iv. Expense documentation for all vendors not already produced to MDE
- v. Proof of the non-profit food service account credited for any unallowable expenses from a non-federal revenue account.

* * *

(GGFS Ex. 8. 8002.) The Serious Deficiency Notice states that MDE-NPS took these actions pursuant to 7 C.F.R. § 226.6(c)(3). (*Id.* at 8003.)

6. On March 8, 2022, MDE-NPS issued a letter proposing to disqualify GGFS the entity and six responsible individuals (“First Proposed Disqualification Notice”). (GGFS Ex. 2, at 2003, May 23, 2022 Panel Decision, FOF⁶ at para. 6.) The notice acknowledges that, on January 10, 11 and 13, 2022, MDE-NPS received GGFS’s documentation detailing the actions it had taken to correct the serious deficiencies. (*Id.*) The letter states, however, that “[b]ased on the review of the documentation, MDE has determined that [GGFS] has not fully and permanently corrected the serious deficiencies cited in the Serious Deficiency Notice.” (*Id.*)
7. The First Proposed Disqualification Notice lists several categories of serious deficiencies that MDE-NPS deemed not cured by GGFS, and references an attached document summarizing the status of those serious deficiencies:

STATUS OF SERIOUS DEFICIENCIES

The institution has engaged in unlawful practices, false and fraudulent claims, 7 CFR § 226.6 (c)(5)(ii).

- Including but not limited to; the institution paid vendors whose business does not exist according to the Minnesota Secretary of State; the institution paid vendors for food who were not licensed to sell or distribute food; the institution did not withhold or pay payroll taxes; the institution used cashier’s checks as primary means to pay bills; the organization cannot support all expense transactions represented on the bank statements.
- The attached document summarizes the status of the serious deficiencies following MDE’s review of your corrective action plan and supporting Exhibits.

(*Id.* at para. 7.) The referenced attachment to this letter, which is a review of GGFS’s serious deficiency corrective action plan (“Review”), states, at the outset, the following:

. . . The serious deficiency declaration was made under Child and Adult Care Food Program (CACFP) regulations (7 CFR 226) after reviewing Youth Leadership Academy dba Gar Gaar Family Services Summer Food Service Program (SFSP) operation. The institution has engaged in unlawful practices, false and fraudulent claims, 7 CFR 226.6(c)(5)(ii).

⁶ FOF refers to the “Findings of Fact” section.

(*Id.*) The Review summarizes MDE-NPS's findings and corrective action plan review in three categories: "met," "not met," and "new issues":

If the corrective action meets or does not meet the requirements:

- **MET**- the documentation successfully corrects the finding and the finding is closed
- **NOT MET**- the documentation does not correct the finding
- **NEW ISSUES**- the documentation provided in the CAP raised new issues which are addressed below

(*Id.* bolded font in original.)

8. The issues identified in the Review as "not met" and "new issues" concern both CACFP, SFSP, and the overall operation of GGFS as an organization. At the hearing, MDE-NPS explained that it "might be using the financial examples, expenses, contracts from the summer food program, but that supports the inability to operate a viable program for CACFP." (Apr. 28, 2022 Hrg. Tr. 30:19-31:13.)
9. In the May 23, 2022 Panel Decision, the Appeal Panel found that, "[w]hile MDE-[NP]S may well have enough evidence in its possession to suggest that serious deficiencies identified in GGFS's operation of CACFP alone may justify proposed disqualification, the record presented to the Appeal Panel d[id] not clearly establish this point since MDE-[NP]S's cited grounds for proposed disqualification mixes issues found in both the CACFP and the SFSP." (May 23, 2022 Panel Decision, COL⁷ at para. 16.) The decision also noted that MDE-NPS did not make available all the information on which MDE-NPS's action was based to GGFS appellants on or before March 29, 2022, when MDE-NPS received GGFS's appeal request. (*Id.* at para. 18.) Furthermore, at the April 28, 2022 hearing, counsel for GGFS appellants urged the Appeal Panel to await results from GGFS's audits, which GGFS expected would remove MDE-NPS's remaining concerns regarding GGFS's alleged financial and managerial improprieties. (Apr. 28, 2022 Hrg. Tr. 37:22-38:9.) GGFS appellants also represented to the Appeal Panel that it expected the audits and other information from the accounting firms to be ready for MDE-NPS's inspection in or around May 2022. (*Id.* at 20:16-25.) In light of all of these circumstances, on May 23, 2022, MDE-NPS determined that the proposed disqualification should be reversed and remanded to MDE-NPS. (May 23, 2022 Panel Decision, COL at para. 19.)

Procedural Background Since the May 23, 2022 Panel Decision

10. On June 27, 2022, MDE-NPS issued a letter to GGFS in response to the Appeal Panel's May 23, 2022 decision ("MDE-NPS's June 27, 2022 Letter"). The June 27, 2022 Letter instructed GGFS that, irrespective of the May 23, 2022 panel decision, the organization and the appellants "must still implement procedures and policies to permanently correct the serious deficiencies. Upon approval of a corrective action, MDE-NPS will temporarily defer the serious deficiency determination. If MDE-NPS initially determines that the corrective action has fully and permanently corrected the serious deficiencies but later determines that the serious deficiencies have recurred, MDE-NPS must move to immediately issue

⁷ COL refers to the "Conclusions of Law" section.

a notice of proposed disqualification.” (GGFS Ex. 14, at 14001.) The June 27, 2022 Letter sets forth ten (10) outstanding corrective items that call for GGFS’s corrective action. (*Id.* at 14002.)

11. On November 18, 2022, MDE-NPS issued another proposed disqualification notice to the GGFS appellants (“Second Proposed Disqualification Notice”). In this notice, MDE-NPS states that it received GGFS’s corrective action documentation on July 25, 2022 in which the organization detailed the action it had taken to correct the serious deficiencies. MDE-NPS concluded that, based on its review of GGFS submissions, the organization still has not fully and permanently corrected the serious deficiencies cited in the Serious Deficiency Notice.
12. The Second Proposed Disqualification Notice states that the agency’s November 18, 2022 action are being taken pursuant to 7 C.F.R. § 226.6(c)(1)(iii)(C). (*Id.*)
13. On December 2, 2022, GGFS appellants appealed MDE-NPS’s November 18, 2022 decision and requested a hearing. On January 20, 2023, hearing took place as scheduled.

CONCLUSIONS OF LAW

I. Legal Authorities of Note

1. The United States Department of Agriculture (USDA) administers the Child and Adult Care Food Program (CACFP) pursuant to federal regulations at 7 C.F.R. Part 226 and other provisions it incorporates by reference. The Summer Food Service Program (SFSP) is governed by 7 C.F.R. Part 225 and other provisions it incorporates by reference.
2. The proposed disqualification of GGFS and its responsible individuals is an appealable action before the Appeal Panel. 7 C.F.R. § 226.6(k)(2).
3. Federal regulations at 7 C.F.R. § 226.6 provides: “[a]ny information on which the State agency’s action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.” 7 C.F.R. § 226.6(k)(5)(vi). *See also* CACFP Appeal Procedure, sec. 4.
4. Federal regulations at 2 C.F.R. § 200.303 provide that “the non-Federal entity [MDE in this context] must . . . [t]ake prompt action when instances of noncompliance are identified[.]” 2 C.F.R. § 200.303(d).
5. If, in reviewing a new institution’s application, MDE-NPS determines that the institution has committed one or more serious deficiency listed in 7 C.F.R. § 226.6(c)(1)(ii), MDE-NPS “must initiate action to: (A) [d]eny the new institution’s application; *and* (B) [d]isqualify the new institution and the responsible principals and responsible individuals (e.g., the person who signs the application).” 7 C.F.R. § 226.6(c)(1) (emphasis added). The serious deficiencies for new institutions that give rise to denial of application and disqualification include:
 - (A) Submission of false information on the institution’s application, . . . ; or
 - (B) Any other action affecting the institution’s ability to administer the Program in accordance with Program requirements.

7 C.F.R. § 226.6(c)(1)(ii).

6. “If timely corrective action is not taken to fully and permanently correct the serious deficiency(ies),” the state agency must notify the institution’s executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution’s application has been denied. 7 C.F.R. § 226.6(c)(1)(iii)(C). At the same time the application denial notice is issued, the state agency must also update the state agency’s list and provide a copy of the notice to the appropriate Food and Nutrition Service Regional Office (FNSRO) of the USDA. *Id.* That notice must also specify:

- (1) That the institution’s application has been denied and the State agency is proposing to disqualify the institution and the responsible principals and responsible individuals;
- (2) The basis for the actions; and
- (3) The procedures for seeking an administrative review (in accordance with paragraph (k) of this section) of the application denial and proposed disqualifications.

7. Under 7 C.F.R. § 226.6(b)(1), “[e]ach new institution must submit information sufficient to document that it is financially viable, is administratively capable of operating the [CACFP] . . . , and has internal controls in effect to ensure accountability.” The new institution is required to “demonstrate in its application that it is capable of operating in conformance with [these] performance standards[.]” *Id.*
8. Under 7 C.F.R. §§ 226.15(b) and 226.16(b), each new institution must submit with its application to MDE-NPS “all information required for its approval as set forth in [7 C.F.R.] §[§] 226.6(b) and 226.6(f).” The submitted information must be sufficient to demonstrate that the applicant institution has “the administrative and financial capability . . . and [complies] with the performance standards set forth in § 226.6(b)(1)(xviii)[.]” *Id.* The federal regulations enumerate up to eight categories of documentation that must be included in an application. *See* 7 C.F.R. § 226.16(b)(1)–(8). MDE-NPS is also required to collect information from the application as specified under 7 C.F.R. § 226.6(f), where applicable.
9. The USDA Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations, A Child and Adult Care Food Program Handbook (“USDA Handbook”) reiterates that the “CACFP regulations define seriously deficient as the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects in its operation of the Program [7 C.F.R. § 226.2].” (USDA Handbook, at 34.) The USDA Handbook references the regulations where typical issues for a new institution that rise to the level of a serious deficiency are listed:

B. Serious Deficiencies for New and Participating Institutions

* * *

New institutions

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

indicates a lack of business integrity. A lack of business integrity includes deception, antitrust violations, embezzlement, theft, forgery, bribery, 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

2. Any other action affecting the institution's ability to administer the Program in accordance with Program requirements [7 Code of Regulations (CFR) 226.6(c)(1)].

(USDA Handbook, at 11.)

10. The USDA Handbook also provides a non-exhaustive list of factors to consider when the agency determines whether the violation rises to the level of a serious deficiency:

- ***The severity of the problem.*** Is the noncompliance on a minor or substantial scale? Are the violations indicative of a recurring problem at the institution, or is the problem an isolated event? Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once.

* * *

- ***The degree of responsibility attributable to the institution.*** To the extent that evidence is available, can the sponsoring organization determine whether the violations were inadvertent errors of an otherwise responsible DCH provider? Is there evidence of negligence or a conscious indifference to regulatory requirements? Or, even worse, is there evidence of deception, or intentional noncompliance?
- ***The institution's history of participation in the Program.*** Are problems of noncompliance frequently recurring at the same institution?
- ***The nature of the requirements that relate to the problem.*** Are the institution's violations a clear violation of Program requirements? Has the provider failed to implement the new CACFP policies appropriately?
- ***The degree to which the problem impacts Program integrity.*** Are the violations undermining the intent or purpose of the CACFP? Are the violations undermining the intent or purpose of the CACFP such as misuse of funds for non-Program purposes, or simply an administrative error [7 CFR 226.6(b)(1)(xviii); (b)(2)(vii), and CACFP 30-2006, Questions and Answers #19 and #20, November 7, 2005]?

(USDA Handbook, at 13–14, bolded and italicized emphasis in original.)

11. The USDA Handbook describes in detail what an appropriate response to a serious deficiency notice should be like and what an acceptable corrective action must include:

In response to the serious deficiency notice, an institution must submit in writing, what corrective action it has taken. This correspondence details the

internal controls implemented to ensure that the serious deficiencies are fully and permanently corrected. The State agency will evaluate the CAP and determine whether adequate internal controls have been put into place to fully and permanently correct the deficiencies. An acceptable CAP must include the following information:

- Names of the institution’s executive director and chairman of the board of directors or other RP/Is associated with the serious deficiencies;
- Address of the institution;
- Dates of birth for all RP/Is associated with the serious deficiencies; and
- Details of the serious deficiencies.
 - **What** are the serious deficiencies and the procedures that were implemented to address the serious deficiencies?
 - **Who** addressed the serious deficiencies? List personnel responsible for this task.
 - **When** was the procedure for addressing the serious deficiencies implemented? Provide a timeline for implementing the procedure (i.e., will the procedure be done daily, weekly, monthly, or annually, and when did implementation of the plan begin)?
 - **Where** is the CAP documentation retained?
 - **How** were staff and if applicable, facilities or providers informed of the new policies and procedures (e.g., handbooks, training, website, emails, etc.) [7 CFR 226.6(c)(1)(iii)(B); (c)(2)(iii)(B); (c)(3)(iii)(B), *and* CACFP 14-2012, *Child and Adult Care Food Program Guidance on the Serious Deficiency Process and Acceptable Corrective Action Plans, National Disqualified List Procedures and Debt Collection*, May 1, 2012, and examples in Part 12. Attachments C and D *Serious Deficiency Corrective Action Plan*].

Additional supporting documentation must be submitted with the CAP to document that corrective actions have occurred; . . .

(USDA Handbook, at 16–17, bolded and italicized emphasis in original, underlined emphasis added.)

II. Analysis of Pertinent Factual Background

A. Procedural History of Note

12. MDE-NPS’s Second Proposed Disqualification Notice dated November 18, 2022 was issued based on GGFS’s failure to fully and permanently correct the serious deficiencies originally identified in MDE-NPS’s Serious Deficiencies Notice dated December 14, 2021. (See GGFS Exs. 1, 8, & 14.) The Appeal Panel’s May 23, 2022 decision reversed MDE-NPS’s March 8, 2022 proposed disqualification on procedural grounds and remanded the matter back to MDE-NPS for further proceedings. (See GGFS Ex. 2.) The May 23, 2022 panel decision makes it clear that, it does not make adjudications as to MDE-NPS serious deficiencies findings.

13. On June 27, 2022, MDE-NPS issued a letter to GGFS and its board members reminding them that, notwithstanding the May 23, 2022 panel decision, the December 14, 2021 serious deficiency findings remained in place and that GGFS and its responsible individuals must still implement procedures and policies to permanently correct the serious deficiencies. (See GGFS Ex. 2.) The same letter also states: “[u]pon approval of a corrective action, MDE-NPS will temporarily defer the serious deficiency determination. If MDE-NPS initially determines that the corrective action has fully and permanently corrected the serious deficiencies but later determines that the serious deficiencies have recurred, MDE-NPS must move to immediately issue a notice of proposed disqualification.” (*Id.*)
14. Pursuant to 7 C.F.R. § 226.6(k)(3)(ii) & (iii), the determination of serious deficiency or the state agency’s determination that corrective action is inadequate are not appealable actions. MDE is prohibited by federal regulations from offering administrative reviews of these actions. *Id.* Therefore, this decision does not adjudicate whether MDE-NPS’s serious deficiency findings were proper, or whether MDE-NPS’s determination that GGFS’s corrective action is inadequate was proper. Instead, the sole issue before this Appeal Panel is whether MDE-NPS’s November 18, 2022 proposed disqualification decision was legally appropriate.
15. In September and October 2021,⁸ GGFS applied to be a new CACFP sponsor. (It previously operated as a CACFP site under Feeding Our Future’s sponsorship in early 2021.) (Jan. 20, 2023 Hrg. Tr. 17:2–18:2.) The March 8, 2022 Proposed Disqualification Letter states that MDE-NPS took the proposed disqualification action “pursuant to 7 CFR 226.6(c)(1)(iii)(C).” (GGFS Ex. 1.) Under this regulatory provision, if, in reviewing GGFS’s application, MDE-NPS determines that GGFS has committed one or more serious deficiency listed in 7 C.F.R. § 226.6(c)(1)(ii), MDE-NPS “*must* initiate action to: (A) [d]eny the new institution’s application; *and* (B) [d]isqualify the new institution and the responsible principals and responsible individuals (e.g., the person who signs the application).” 7 C.F.R. § 226.6(c)(1) (emphasis added). Such serious deficiencies may include: (A) Submission of false information on the institution’s application, . . . ; or (B) Any other action affecting the institution’s ability to administer the Program in accordance with Program requirements.” 7 C.F.R. § 226.6(c)(1)(ii).
16. The November 18, 2022 notice continues to base the agency’s second proposed disqualification decision on GGFS appellants’ failure to correct the serious deficiencies set forth in the December 14, 2021 Serious Deficiencies Notice. The December 14, 2022 notice describes these serious deficiencies as:

SERIOUS DEFICIENCIES AND REQUIRED CORRECTIVE ACTION

The enclosed CACFP Sponsor Application Review Findings provides additional details to the below findings:

1. The institution has engaged in unlawful practices, false and fraudulent claims, 7 CFR 226.6(c)(5)(ii).
 - a. Including but not limited to; [*sic*] the institution paid vendors whose business does not exist according to the Minnesota Secretary of State; the institution paid vendors for food who

⁸ MDE-NPS represented at the hearing that GGFS submitted two CACFP applications—one in September and the other in October 2021 (September being the end of the previous program year), and that MDE-NPS denied both applications. (Jan. 20, 2023 Hrg. Tr. 25:21–26:4.)

were not licensed to sell or distribute food; the institution did not withhold or pay payroll taxes; the institution used cashier's checks as primary means to pay bills; the organization cannot support all expense transactions represented on the bank statements.

(GGFS Ex. 8, at 8002.)

17. The December 14, 2022 notice also provides directives for GGFS to correct these identified serious deficiencies, as follows:

- b. The institution must provide the following documentation to correct the issues:
 - i. Food licenses and contracts for all vendors paid
 - ii. Proof of all vendors as a registered business with their corresponding regulatory agency
 - iii. Proof of payroll withholdings for all staff paid
 - iv. Expense documentation for all vendors not already produced to MDE
 - v. Proof of the non-profit food service account credited for any unallowable expenses from a non-federal revenue account.

(*Id.*, emphasis added.) The Review attached to MDE-NPS's March 8, 2022 Proposed Disqualification Notice is a five-page document in which MDE-NPS provides a detailed listing of requirements that have been "met," "not met," and "new issues."

If the corrective action meets or does not meet the requirements:

- o **MET**- the documentation successfully corrects the finding and the finding is closed
- o **NOT MET**- the documentation does not correct the finding
- o **NEW ISSUES**- the documentation provided in the CAP raised new issues which are addressed below

(GGFS Ex. 12, *see* at 12001 for the block quote, *see generally* for MDE-NPS's itemized review findings.) The various issues classified by MDE-NPS as "Not Met" and "New Issues" are found in association with:

Required: Provide food licenses and contracts for all vendors paid.

* * *

Required: Proof of all vendors as a registered business with their corresponding regulatory agency

* * *

Required: Proof of payroll withholdings for all staff paid

* * *

Required: Expense documentation for all vendors not already provided to MDE

* * *

Required: Proof of the non-profit food service account credited for any unallowable expenses from a non-federal revenue account.

* * *

(*Id.*, detailed description of issues omitted.)

B. Key Findings in the May 23, 2022 Panel Decision

18. In the May 23, 2022 panel decision issued in connection with MDE-NPS's first proposed disqualification, the Appeal Panel found that MDE-NPS mixed findings in GGFS's CACFP, SFSP, and the overall operation of GGFS, and noted that for the issues solely related to the SFSP, the administrative record did not show that sufficient notice had been given under the SFSP federal regulations. (GGFS Ex. 2, para. 16, at 2009.)

19. In the May 23, 2022 panel decision, the Appeal Panel also observed:

While some of these items may have been characterized as 'new issues,' they do appear to have derived from serious deficiencies previously identified under the five corrective action directives listed in MDE-NPS's December 14, 2021 notice."

(*Id.*, para. 14, at 2009.) Furthermore, the May 23, 2022 panel decision notes GGFS's reassurance to the Appeal Panel regarding its allegedly forthcoming audit report as another consideration that factored in the Appeal Panel's decision to reverse and remand MDE-NPS's first proposed disqualification:

On a related note, at the hearing, *counsel for GGFS appellants urged the Appeal Panel to await results from GGFS's audits, which GGFS expects will remove MDE-[NP]S's remaining concerns regarding GGFS's alleged financial and managerial improprieties.* (Apr. 28, 2022 Hrg. Tr. 37:22-38:9.) *GGFS appellants also represented to the Appeal Panel that it expects the audits and other information from the accounting firms to be ready for MDE-[NP]S's inspection in or around May 2022.* (*Id.* at 20:16-25.) In light of these considerations, the Appeal Panels finds it appropriate to reverse and remand MDE-[NP]S's March 8, 2022 decision back to MDE-[NP]S.

(*Id.*, para. 19, at 2010, emphasis added.)

C. MDE-NPS's Instructions to and Findings about GGFS during the Administrative Remand

20. MDE-NPS's June 27, 2022 Letter to GGFS correctly states that, notwithstanding the May 23, 2022 panel decision, the GGFS appellants "must still implement procedures and policies to permanently correct the serious deficiencies" (See GGFS Ex. 14, at 14001.) The June 27, 2022 Letter lists ten (10) specific instructions for correcting the outstanding serious deficiencies, as follows:

Outstanding corrective action items:

1. Correct all meal claims that were submitted as “self-prep” in which the site was vended by a catering contract (Landen Distribution, Samo Trading, Bako Trading, Africa Grocery, The Produce, United Halal Market, Jubba Foods LLC)
2. Correct all meal claim counts which do not match supporting documentation
3. Invoices showed payment was provide to vendors higher than the approved contract price. Provide detailed correction documentation that the nonprofit food service account was credited the difference of the payment vs. the approved amount.
4. Provide all procurement documentation to MDE of all catering contracts
5. Provide food and beverage license for all vendors
6. Provide detailed correction documentation that the full amount paid to S&S Catering is restored to the nonprofit food service account using non-federal Child Nutrition Program funds.
7. Provide updated procedures which detail how Youth Leadership Academy dba Gar Gaar Family Services will properly vet food vendors, specifically to prevent payment to fraudulent shell companies (i.e. S&S Catering)
8. Provide updated procedures and detailed documentation of 3 months of payroll documentation showing proper payroll taxes and payments made.
9. Provide 12-months of expense documentation and financial statements, all wire transfers and cashier[']s checks must be detailed. If no expense documentation exists, the funds must be repaid to the nonprofit food service fund using non-federal Child Nutrition Program funds.
10. Federal Single Audit must be completed and submitted to the Federal Audit Clearinghouse by the federal deadline.

(*Id.*, at 14002, emphasis underlined.) The letter also states that documents used by MDE-NPS to support its action have been made available on the SharePoint site. (*Id.*)

21. MDE-NPS’s Second Proposed Disqualification Notice dated November 18, 2022 properly separated the issues identified for the CACFP and SFSP. Following the Appeal Panel’s directives in the May 23, 2022 panel decision, MDE-NPS states that it has “reversed [the SFSP] findings for the serious deficiency . . . and w[ould] re-issue under 7 CFR 225 as necessary if the finding still exists after the corrective action review.” (GGFS Ex. 1, at 1001.) Under each finding identified under the SFSP, MDE-NPS similarly noted that the agency “retracts th[at] finding under 7 CFR 226 and will issue a serious deficiency under 7 CFR 225.” (*Id.* at 1002–1004.)

22. Pages 2 through 5 of the Second Proposed Disqualification Notice detail each outstanding serious deficiency item and its status based on MDE-NPS’s review of GGFS’s corrective action documentation. To the extent relevant to MDE-NPS’s application of the CACFP regulations, the following outstanding items are deemed not corrected by MDE-NPS:

Finding: Unlawful business practices, unregistered vendors/contractors paid amounts varying from the contracted amount and contracted services.

* * *

Required Corrective Action: Provide all procurement documentation to MDE of all catering contracts

C. NOT CORRECTED: GGFS provided contracts and justified their lack of procurement documentation (RFP, public posting, bids received, documentation of bid review and selection, documentation of selection by board or authorization) on the public health emergency of COVID-19. However, the public health emergency does not alone allow non-competitive [2 CFR 200.320(c)] procurement. The organization must still document the reason or timing justification for non-competitive procurement. Considering that GGFS had planned to operate CACFP for months, there should have been enough time for an RFP posting and collection of bids.

Required Corrective Action: Provide food and beverage license for all vendors

D. NOT CORRECTED:

- a. Afrik- an expired license was provided (4/2020)
- b. Bako/Samo – Bloomington license application provided but no license.
- c. Gab Halal – health inspection lookup is provided but no license
- d. Haji’s Kitchen- no license provided
- e. Hooyo’s Café- an expired license was provided (04/2021)
- f. Midland Wholesalers- no license provided
- g. Premium Fresh Produce – no license provided
- h. US Halal Foods – no license provided

* * *

Required Corrective Action: Provide updated procedures, which detail how [GGFS] will properly vet food vendors, specifically to prevent payment to fraudulent shell companies (i.e. S&S Catering⁹)

⁹ The Appeal Panel take judicial notice that S&S Catering has been implicated in multiple unsealed indictments in the ongoing federal food programs fraud investigation. *U.S. Attorney Announces Federal Charges Against 47 Defendants in \$250 Million Feeding Our Future Fraud Scheme, Nonprofit Feeding Our Future and 200+ Meal Sites in Minnesota Perpetrated the Largest COVID-19 Fraud Scheme in the Nation*, <https://www.justice.gov/opa/pr/us-attorney-announces-federal-charges-against-47-defendants-250-million-feeding-our-future> (last accessed Feb. 2, 2023).

- F. NOT CORRECTED: Policy provided but is not descriptive. Needs to be updated to how site monitors review documentation, how vendors are vetted through the procurement process including the general procurement standards of 2 CFR 200.318, especially 2 CFR 200.318(h). Corrective action must document how the finding is permanently corrected and corrective action must be in the form of a procedure or plan which details the who, what, where, when and how the corrective action is implemented.

Finding: Unlawful business practices, employees paid cashier's checks, no payroll taxes taken out. Organization also cannot account for all expenses.

Required Corrective Action: Provide updated procedures and detailed documentation of 3 months of payroll documentation showing proper payroll taxes and payments made.

- G. NOT CORRECTED: Documentation of cashier's checks were provided from SFSP, but no updated payroll documentation was provided to show proof of the updated payroll policy to use ADP and properly pay payroll taxes going forward after the corrections were made for the timeframe GGFS applied for CACFP.

Required Corrective Action: Provide 12-months of expense documentation and financial statements, all wire transfers and cashier's checks must be detailed. If no expense documentation exists, the funds must be repaid to the nonprofit food service fund using non-federal Child Nutrition Program funds.

- H. NOT CORRECTED: GGFS did not provide 12 months of financial statements. Instead, GGFS said this was being sent to their auditor for the federal single audit. Although this may be true, the documentation requested is still necessary and needs to be evaluated by MDE staff per the serious deficiency determination. Expense documentation was provided (separated by vendor) but no financial statements were provided.
- I. On 09/20/2022 federal indictments were released which charged Haji Salad with [fraud] for his role in the scheme to defraud the federal Child Nutrition programs. Haji formed Haji's Restaurant and GGFS not only paid Haji's Kitchen but supplied additional corrective action documentation on July 25, 2022 supporting their payment to Haji's Kitchen. Additionally, in the indictment, p.14, paragraph 37, evidence of The Produce formed by Fahad Nur and receiving funds from the Child Nutrition Program. Nur opened a bank account on July 12, 2021 for The Produce and received payments for food that was not supplied. In fact, Nur did not make food purchases until September 2021. Youth Leadership Academy submitted to MDE that The Produce was a supplier during summer 2021 and as a vendor for the CACFP. As indicated on GGFS corrective action documentation "GGFS Affidavit Exhibits Combined A-UU 1.10.22," exhibits A-F detail how GGFS paid The Produce over \$1 million from July 2021 to September 2021. One exhibit is of the Office of the Minnesota Secretary of State signed by Fahad Nur which registered "The Produce" in Minnesota. The dates provided by GGFS of The Produce match identical to the dates used in the indictment of Fahad Nur. GGFS uploaded multiple vended meal contracts with "The Produce" for CACFP operations in their

application. These contracts were signed by various site operators and Priya Morioka, COO/CFO of GGFS.

Finding: Unlawful practices, not following 2 CFR 200 in regard[] to federal funding and tracking.

Required Corrective Action: Federal Single Audit must be completed and submitted to the Federal Audit Clearinghouse by the federal deadline.

- J. NOT CORRECTED: No federal audit completed by the date of this letter. Need to review financial statements to understand when GGFS's year-end is to determine deadline date, however any audit submitted past 09/30/2022 is late and is out of compliance with 2 CFR 200 subpart F.

(GGFS Ex. 1, at 1002–1005, bolded font in original.)

23. In Summary, the Second Proposed Disqualification Notice states that, in accordance of the May 23, 2022 panel decision that remanded the First Proposed Disqualification to MDE-NPS, MDE-NPS has since separated the specific findings set forth in the First Proposed Disqualification Notice that are unrelated to CACFP or the overall operation of GGFS. (GGFS Ex. 1.) After reviewing GGFS's attempted correction of the remaining outstanding serious deficiency items evidenced by the documentation submitted by GGFS, MDE-NPS concluded that those identified serious deficiencies have not been fully and permanently corrected. (*Id.* at 5.) Based on these grounds, on November 18, 2022, MDE-NPS moved forward with proposing to disqualify GGFS, Khadija Ali and Priya Morioka, Mark Ritchie, DC Zeynep Tuzcu, Mohamed Horia, and Mohamed Sharif Maruf from future program participation. (*Id.*)

III. Legal Analysis

24. The Appeal Panel has reviewed the entire administrative record before it.

A. Representation by GGFS Regarding Its Failure to Submit an Audit Report by the Federal Deadline

25. In the agency's June 27, 2022 letter to GGFS, one of the ten (10) outstanding items that MDE-NPS instructed GGFS to complete in order to fully and permanently correct its serious deficiencies is:

10. Federal Single Audit *must be completed and submitted* to the Federal Audit Clearinghouse *by the federal deadline*.

(GGFS Ex. 14, at 14002, emphasis added.) GGFS does not dispute that the federal deadline was September 30, 2022, GGFS's counsel acknowledged that this deadline "is imposed by the Federal Clearinghouse, and there is actually no way to extend that deadline." (Jan. 20, 2023 Hrg. Tr. 34:17–35:8.)

26. The fact that GGFS was unable to provide its financial statements to its own auditor "until September 2022" (GGFS Ex. 5, at 5027) calls into question the truthfulness of GGFS's previous representation to the Appeal Panel at the April 28, 2022 hearing that GGFS expected its audit report would be available to MDE by mid or late May 2022. (Apr. 28, 2022 Hrg. Tr. 20:16–25.) The Appeal Panel notes that, when asked about the delay in submitting its audit report, GGFS alleged that, due to GGFS's tarnished image

as portrayed in the media,¹⁰ GGFS's former audit firm, Eide Bailly, resigned from the audit engagement, which resulted in GGFS's failure to proffer an audit report in May 2022. (Jan. 20, 2023 Hrg. Tr. 33:15–34:10.) When asked about the precise date of Eide Bailly's resignation, GGFS's counsel and Ms. Ali both stated that Eide Bailly resigned the day after the April 28, 2022 hearing. (*Id.*) GGFS's counsel acknowledged that Eide Bailly never received GGFS's financial statements. (*Id.*) GGFS's own exhibit indicates it engaged Eide Bailly for the audit service as early as November 16, 2021. (*See* GGFS Ex. 20.) GGFS's answers during the hearing show that GGFS had not even provided Eide Bailly with its financial statements by the end of April 2022. It baffles the Appeal Panel how GGFS could have confidently reassure the Appeal Panel at the April 28, 2022 hearing that its audit report was forthcoming by mid-May (Apr. 28, 2022 Hrg. Tr. 20:16–25) and that it expected the audit report would remove MDE-NPS's remaining concerns regarding GGFS's alleged financial and managerial improprieties (*id.* at 37:22–38:9).

27. Moreover, MDE-NPS's November 18, 2022 proposed disqualification notice states that it "received the documentation detailing the actions GGFS has taken to correct these serious deficiencies on July 25, 2022[.]" (GGFS Ex. 1, at 1001.) The notice states that, while GGFS submitted some corrective action documentation, it "did not provide 12 months of financial statements. Instead, GGFS said this was being sent to their auditor for the federal single audit." (*Id.* at 1001.) It appears that, when GGFS did not provide MDE-NPS with its 12 months of financial statements on or about July 25, 2022, GGFS represented to MDE-NPS that its inability to provide such documents was ostensibly due to the financial statements being sent to its auditor, Mazanec. At the January 20, 2023 hearing, when pressed by the Appeal Panel about the exact dates of Mazanec's engagement and GGFS's submission of their financial statements to Mazanec, GGFS responded that it would confirm via a post-hearing letter to the Appeal Panel. (Jan. 20, 2023 Hrg. Tr. 34:11–16.) The Appeal Panel allowed GGFS to submit the letter by January 27, 2023. (*Id.* at 40:2–41:15.) GGFS's letter states that it engaged Mazanec for the audit service on June 14, 2022 and submitted GGFS's completed financial statements to Mazanec on August 22, 2022. (*See* GGFS Jan. 27, 2023 Letter to Appeal Panel.) These underlined dates suggest that the actual reason GGFS was unable to provide MDE-NPS with its 12 months of financial statements among its submissions of

¹⁰ GGFS's brief alleges that GGFS lost Eide Bailly's audit engagement and had "extreme[]" difficulty in its search for a replacement accounting firm to conduct the 2021 Federal Single Audit "due in large part to the defamatory article [by the Star Tribune] as well as "allegations that MDE was continuing to make against [GGFS] (many of which had already been rejected by the First Appeal Panel in its order dated May 23, 2022)." (GGFS Br. at 11.)

Regarding GGFS's allegation that a March 9, 2022 Star Tribune article linking GGFS to the Feeding Our Future fraud is "defamatory," GGFS stated at the hearing that it did not make a complaint or bring a lawsuit against Star Tribune for the alleged defamation due to a "financial and strategic determination." (Jan. 20, 2023 Hrg. Tr. 36:2–18.) GGFS acknowledged that it sent a letter of retraction to Star Tribune but Star Tribune never retracted the allegedly defamatory article. (*Id.*) GGFS acknowledged that there has not been any official finding that the Star Tribune article is defamatory. (*Id.* at 37:5–19.) The Star Tribune article in question is dated March 9, 2022. Eide Bailly's resignation date is, according to GGFS, April 29, 2022. (*Id.* at 33:15–34:10.)

Regarding GGFS's allegation that "many of [MDE's allegations against GGFS] had already been rejected by the First Appeal Panel in its order dated May 23, 2022)," this Appeal Panel must point out that it is a mischaracterization. The May 23, 2022 panel decision reversed and remanded the previous proposed disqualification *on procedural grounds only and never rejected any substantive findings made by the agency*. That decision directed MDE-NPS to fix procedural insufficiencies on remand, and the panelists relied on GGFS's confident reassurance during the April 28, 2022 hearing that GGFS's audit report was forthcoming in mid or late May 2022. (*See generally* GGFS Ex. 2.)

July 25, 2022 might not have been due to the same being sent to the auditor, because GGFS now states that it did not send them to the auditor until August 22, 2022.¹¹

28. It is undisputed that GGFS did miss the September 30, 2022 deadline. Meeting the deadline is one of the ten (10) outstanding items required of GGFS to fully and permanently correct its serious deficiencies in order to obtain a deferral of the proposed disqualification agency action. GGFS does not dispute that its current management has been around since at least October 2021. (See GGFS Principal Identification Form dated October 2021.) Failing to meet this deadline alone is sufficient to establish that GGFS did not fully and permanently correct all the outstanding serious deficiencies within the allowable timeframe. But the administrative record is extensive as to numerous additional serious deficiencies that GGFS did not correct. See *infra* III. B & C.

B. Multiple Findings in GGFS's Audit Report Echo MDE-NPS's Serious Deficiencies Determination

29. At the April 28, 2022 hearing conducted for the previous GGFS administrative appeal, GGFS represented to the Appeal Panel that it was already working with an audit firm and that GGFS expected the audits and other accounting information to be ready for MDE-NPS's inspection by mid or late May 2022. (Apr. 28, 2022 Hrg. Tr. at 20:16-25.)
30. GGFS did not submit an audit report to MDE-NPS in May 2022. GGFS's audit report was due to the Federal Audit Clearinghouse by September 30, 2022, and a copy of the report was due to MDE-NPS by the same date. GGFS was not unable to submit the report on time. On November 18, 2022, MDE-NPS issued a Late Audit Notice, which reiterates GGFS's contractual and regulatory obligation regarding audit and demands that GGFS respond to the notice no later than December 11, 2022:

Per 2 CFR 200.501 and the permanent agreement signed with MDE, it is required to have a financial and compliance audit done on an annual basis and submitted within 30 days of receiving or 9 months after the end of your organizations fiscal year. Your organization is required to provide our agency with a copy of your financial statements along with the independent auditor's report on them; the single audit report and all other reports and communications required by 2 CFR 200.

Your financial statements and audit reports for fiscal year 2021 are due in our office within nine months of the close of your fiscal year. The due date is September 30, 2022 and our records show that we have not yet received them.

* * *

¹¹ The Appeal Panel also notes that Mazanec report states its "[a]uditors were not provided adequate client-prepared 2021 financial statements until September 2022." (GGFS Ex. 5, at 5027, emphasis added.) While August 22, 2022 is a date close to September 2022, the term "adequate" suggests Mazanec might not have considered the August 22, 2022 financial statements adequate. In any event, "being sent to the[] auditor" does not appear to be a truthful reason for GGFS's failure to submit those financial statements to MDE-NPS in its July 25, 2022 corrective action documentation packet. Even if the originals did get sent to the auditor at the time, GGFS could still have provided MDE-NPS with photocopies. MDE-NPS received no photocopies of GGFS's financial statements on July 25, 2022.

If the single audit was completed, it must be uploaded to the federal audit clearinghouse and a copy uploaded to your organizations MDE SharePoint site. A response to this request is due by 5pm on December 11, 2022 by email to Emily.Honer@state.mn.us.

(See MDE-NPS’s Late Audit Notice to GGFS.)

31. On December 9, 2022, GGFS responded to MDE-NPS’s Late Audit Notice by submitting a preliminary draft audit report authored by the audit firm Mazanec, Bauer & Associates, PLC (the preliminary report is hereafter referred to as “Mazanec report” or “the audit report”). GGFS’s final audit report was submitted to the Federal Audit Clearinghouse on December 15, 2022. (Jan. 20, 2023 Hrg. Tr. at 16:16–21.)
32. At the January 20, 2023 hearing, attorney Sam Chapin stated on behalf of GGFS appellants that they do not dispute any of the findings in the December 9, 2022 preliminary audit report prepared by Mazanec. (*Id.* at 32:23–33:14.) Both GGFS and MDE-NPS allege that the Mazanec report supports their respective positions. (*See Id.* at 33:8–14; 16:10–17:1.)

Analysis of Pertinent Portions of Mazanec Report

33. MDE-NPS “*must only* approve the applications of those new institutions that meet these performance standards, and *must deny* the applications of those new institutions that do not meet the standards.” 7 C.F.R. § 226.6(b)(1)(xviii). (emphasis added). In ensuring compliance with these performance standards, MDE-NPS is authorized by federal regulations to *use its discretion* in determining whether an application *establishes to MDE-NPS’s satisfaction* that the applicant institution meets the performance standards. *Id.*
34. The Appeal Panel has reviewed the Mazanec report and takes note of the following which are directly quoted from the report:

Chart 1: Analysis Notes of Mazanec Report by Appeal Panel		
(emphasis by the Appeal Panel is underlined; bolded and italicized fonts are from the original text quoted)		
	Direct Quotes from the Mazanec report	Appeal Panel’s Observations
1	<p><u><i>Qualified Opinion on Federal Assistance Listing Number 10.558, Child and Adult Care Food Program (“CACFP”)</i></u> In our opinion, <u>except for the noncompliance described in the Basis for Qualified and Unmodified Opinions section of our report</u>, the Organization complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and</p>	<p>Appeal Panel: GGFS’s Appeal Brief block quotes the Mazanec report’s opinion as to the SFSP while omitting the block quote of the auditor’s “qualified opinion” as to the CACFP. In addressing the audit report’s opinion as to the CACFP, GGFS states in a footnote that all those findings that “the auditors view to be material¹² deviations from the federal compliance requirements” in the CACFP “comes from activity</p>

¹² The determination of serious deficiencies or the state agency’s determination that an institution’s corrective action is inadequate are not appealable actions. 7 C.F.R. § 226.6(k)(3)(ii) & (iii). MDE is prohibited by federal regulations from offering administrative reviews of these actions. *Id.* “Serious deficiencies” and “material noncompliance” are distinct concepts, and MDE-NPS is not bound by the audit report’s choice of words when exercising its discretion.

	<p>material effect on the Child and Adult Care Food Program (“CACFP”) for the year ended December 31, 2021.</p> <p>(GGFS Ex. 5, at 5019.)</p>	<p>the organization’s prior management operation of one CACFP site during the spring of 2021.” (GGFS Br. at 21, n. 10, emphasis in original.)</p> <p>The pertinent unfavorable findings and observations in the audit report regarding GGFS’s overall management and internal controls, and its operation of the CACFP and SFSP manifest that GGFS’s current management continue to engage in unlawful business practices that are no less significant than what it attempts to blame on the prior management. The many instances of noncompliance in GGFS’s SFSP operation not only ran afoul of the law but also contradicted GGFS’s own written procedures and policies. These violations must be considered by MDE-NPS when reviewing GGFS’s CACFP applications because they reflect upon GGFS’s overall management, internal control, and operation as an organization.</p> <p>Notwithstanding the language employed by the Mazanec report to characterize its “opinions,” the Appeal Panel must analyze the specific findings that speak for themselves.</p>
2	<p><i>Unmodified Opinion on Federal Assistance Listing Number 10.559, Summer Food Service Program for Children (“SFSP”)</i></p> <p>In our opinion, the Organization complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on the Summer Food Service Program for Children (“SFSP”) identified in the summary of auditor’s results section of the accompanying schedule of findings and questioned costs for the year ended December 31, 2021.</p> <p>(GGFS Ex. 5, at 5019.)</p>	<p>The pertinent unfavorable findings and observations in the audit report regarding GGFS’s overall management and internal controls, and its operation of the CACFP and SFSP manifest that GGFS’s current management continue to engage in unlawful business practices that are no less significant than what it attempts to blame on the prior management. The many instances of noncompliance in GGFS’s SFSP operation not only ran afoul of the law but also contradicted GGFS’s own written procedures and policies. These violations must be considered by MDE-NPS when reviewing GGFS’s CACFP applications because they reflect upon GGFS’s overall management, internal control, and operation as an organization.</p> <p>Notwithstanding the language employed by the Mazanec report to characterize its “opinions,” the Appeal Panel must analyze the specific findings that speak for themselves.</p>
3	<p><i>Matters Giving Rise to Qualified Opinion on CACFP</i></p> <p>As described in the accompanying schedule of findings and questioned costs, <u>the Organization did not comply with requirements regarding Assistance Listing No. 10.558, CACFP, as described in finding number 2021-03 for the use of funds and recording of the necessary documents needed for this program.</u></p> <p><u>Compliance with such requirements is necessary, in our opinion, for the Organization to comply with the requirements applicable to that program.</u></p> <p>(GGFS Ex. 5, at 5020.)</p>	<p>Appeal Panel:</p> <p>The Mazanec report states that, as of the time of the audit report’s issuance (December 9, 2022), GGFS’s use of funds and recordkeeping do not comply with CACFP requirements.</p> <p>GGFS’s CACFP applications were submitted in September and October 2021. (Jan. 20, 2023 Hrg. Tr. 25:21–26:4.)</p> <p>The timing indicates that the significant deficiencies in internal control, recordkeeping, accounting and monitoring are not merely issues that can be blamed on the prior management of GGFS. As the block quotes from the Mazanec report suggest, GGFS’s new management have not been able to cure many of the deficiencies allegedly left behind by the previous management, and have also missed their own deadlines and omitted key recordkeeping requirements themselves.</p>
4	<p>Section II: Financial Statement Findings 2021-01</p> <p>Type of Finding: <u>Significant Deficiency in Internal Control</u></p> <p>Condition</p>	<p>Appeal Panel:</p> <p>The significant deficiencies regarding improper handling of payroll and payroll taxes echo MDE-NPS’s December 14, 2021 findings of serious deficiencies that GGFS engaged in unlawful</p>

<p>During our testing of internal controls surrounding payroll, we noted <u>certain internal control functions for the payroll process were not properly designed or monitored which allowed inadequate reporting, documentation, and payroll distribution</u> for employees and subcontractors, including the following:</p> <ul style="list-style-type: none"> - <u>Payroll and payroll taxes were not accurately paid or recorded in a timely manner for the first portion of the year.</u> This caused the company to be paying the employees portion or payroll taxes with the employer portion. Payroll was being paid with cashier’s checks and not being accurately kept track of due to being paid in this manner. - <u>Pay of subcontractors was not always adequately reported.</u> Determinations of subcontractor vs the employee were inconsistent as was the related filing of 1099s. <p style="text-align: center;">* * *</p> <p>Views of Responsible Officials and Corrective Action Plan Management agrees payroll procedures should be strengthened and monitored to ensure this important function is handled correctly. . . .</p> <p>(GGFS Ex. 5, at 5026.)</p>	<p>practices such as “the institution did not withhold or pay payroll taxes; the institution used cashier’s checks as primary means to pay bills[.]” (GGFS Ex. 8, at 8002.) The findings are also corroborated by MDE-NPS’s November 18, 2022 notice that “[d]ocumentation of cashier’s checks were provided from SFSP, but no updated payroll documentation was provided to show proof of the updated payroll policy to use ADP and properly pay payroll taxes going forward after the corrections were made for the timeframe GGFS applied for CACFP.” (GGFS Ex. 1, at 1004.)</p> <p>The significant deficiencies regarding paying subcontractors without always adequately reporting these payments echo MDE-NPS’s December 14, 2021 findings of serious deficiency of unlawful practices such as “the organization cannot support all expense transactions represented on the bank statements.”</p> <p>(GGFS Ex. 8, at 8002.)</p> <p>The management’s agreement in the “Views” section suggests that, as of the time of the auditor’s report (December 9, 2022), the current (not prior) management of GGFS acknowledges that these deficiencies were yet to be fixed moving forward.</p>
<p>5 Section II: Financial Statement Findings (Continued) 2021-02 Type of Finding: <u>Significant Deficiency in Internal Control</u></p> <p>Condition During our testing of internal controls regarding accounting and recordkeeping <u>we found some inadequate amounts with lack of documentation and explanation</u>, including the following:</p> <ul style="list-style-type: none"> - <u>Some significant vendor payments were made without evidence of supporting invoices or other records.</u> - <u>The Organization is attempting to collect certain overpayments to vendors that resulted from inadequate internal controls over this area.</u> 	<p>Appeal Panel: The significant deficiencies regarding “some inadequate amounts with lack of documentation and explanation,” which include “[s]ome significant vendor payments were made without evidence of supporting invoices or other records” and the fact that GGFS is still “attempting to collect certain overpayments to vendors” echo MDE-NPS’s December 14, 2021 findings of serious deficiency of that GGFS engaged in unlawful practices such as “the organization cannot support all expense transactions represented on the bank statements” and “the institution paid vendors for food who were not licensed to sell or distribute food[.]” (GGFS Ex. 8, at 8002.)</p> <p>The auditor notes that GGFS’s “financial statements were not completed on time throughout the year . . .” and that “[a]uditors were not provided adequate</p>

	<p>- The Organization’s interim and annual <u>financial statements were not completed on time throughout the year or after completion of the fiscal year-end</u> as necessitated by the Organization’s accounting and financial policy procedures document. <u>Auditors were not provided adequate client-prepared 2021 financial statements until September 2022.</u></p> <p style="text-align: center;">* * *</p> <p>Views of Responsible Officials and Corrective Action Plan <u>Management agrees that it can significantly improve their internal control procedures for accounting and recordkeeping by simply following their own</u> very thorough Accounting Policies and Procedures document. . . .</p> <p>(GGFS Ex. 5, at 5027.)</p>	<p>client-prepared 2021 financial statements <u>until September 2022.</u>”</p> <p>“Throughout the year” contradicts GGFS’s representation that that only the “prior” management was to blame for its serious deficiencies.</p> <p>GGFS’s current management’s inability to timely submit the 12-month financial statements and complete its audit means that GGFS has failed to correct the outstanding items identified by MDE-NPS such as: “9. Provide 12-months of expense documentation and financial statements, If no expense documentation exists, the funds must be repaid to the nonprofit food service fund using non-federal Child Nutrition Program funds. 10. Federal Single Audit must be completed and submitted to the Federal Audit Clearinghouse by the federal deadline.” (GGFS Ex. 14, at 14002.)</p> <p><i>See also supra:</i> Subsection III. A. for further discussion of GGFS’s questionable explanation of its failure to meet the federal audit report submission deadline of September 30, 2022.</p>
6	<p>Section III: Findings and Questioned Costs – Major Federal Programs</p> <p>2021-03 Federal Agency: U.S. Department of Agriculture Federal Programs: 10.558 Child and Adult Care Food Program</p> <p style="text-align: center;">* * *</p> <p>Type of Finding: <u>Material Noncompliance and Material Weakness in Internal Control</u></p> <p>Statement of Condition <u>The auditor was unable to obtain sufficient supporting documentation for allowable food and non-food costs for the short period of time that the Organization was operating the CACFP sites under the pass-through entity, Feeding our Future.</u> Current management was unable to obtain requested records from former management who had supervised CACFP.</p> <p style="text-align: center;">* * *</p> <p>(GGFS Ex. 5, 5028)</p>	<p>Appeal Panel: The material noncompliance and material weakness in internal control identified here include GGFS’s inability to provide sufficient supporting documentation for allowable food and non-food costs while the institution operated through Feeding Our Future as one of its sites.</p> <p>This material noncompliance and material weakness in internal control appear to be consistent with GGFS’s representation that the issue derived from the prior management. The same cannot be said about most of GGFS’s compliances analyzed elsewhere in this chart.</p>

7	<p>Section III: Findings and Questioned Costs – Major Federal Programs (Continued) 2021-04 Federal Agency: U.S. Department of Agriculture Federal Programs: 10.559 Summer Food Service Program for Children * * *</p> <p>Type of Finding: <u>Noncompliance and Significant Deficiency in Internal Control</u></p> <p>Statement of Condition <u>The Organization spent government funds to purchase a vehicle during the year, this is not allowed with the funding from the above federal programs</u> received through the Minnesota Department of Education.</p> <p>Criteria or Specific Requirement The purchase of a vehicle or any other capital assets is not allowed according to FNS instruction 796-4 which states, “FNS has determined other costs for which SFSP funds may not be disbursed. These costs include the following: Other capital assets including vehicles.” <u>In doing this the organization has been noncompliant with government funds.</u> * * *</p> <p>(GGFS Ex. 5, at 5029.)</p>	<p>Appeal Panel: GGFS does not dispute that the current management operated GGFS’s summer program, SFSP. (Jan. 20, 2023 Hrg. Tr. 11:7–11.) As the findings indicate, GGFS’s new management continues to engage in business practices in violation of the program regulations.</p> <p>GGFS improperly spent the federal funds on the purchase of a truck. The food program funding is for feeding starving children and cannot be used to acquire capital assets such as a vehicle which was what the current management of GGFS did.</p> <p>GGFS claims that it was unaware of this requirement. However, “[p]rovid[ing] adequate and regular training of sponsoring organization staff and sponsored facilities” and “ha[ving] a financial system with management controls . . . [t]hat funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes” are among the criteria that GGFS, as a new sponsor, must meet in order to meet the regulatory performance standards. 7 C.F.R. § 226.6(b)(1)(xviii).</p> <p>As of the date of the Mazanec Report, which was nearly one and a half years after the improper expenditure on the truck, GGFS is still “working to recover the federal funds spent on the purchase of the unallowable vehicle cost.” (GGFS Ex. 5, at 5012.) This statement indicates GGFS’s current management has not successfully recouped the misappropriated federal funds even after being made aware that the business practice is unlawful.</p> <p>GGFS’s unsuccessful attempts to recover its improper expenditure on the vehicle¹³ show that it fails to correct the outstanding items identified by MDE-NPS such as “[i]f no expense documentation exists, the funds must be repaid to the nonprofit food service fund using non-federal Child Nutrition Program funds.”</p> <p>(GGFS Ex. 14, at 14002.)</p>
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¹³ GGFS’s “Corrective Action Planned” section by its current management attached to the end of the Mazanec report makes no mention of any attempt to recover the unallowable expenditure on the vehicle. (GGFS Ex. 5, at 5036.) The five (5)-digit unallowable expenditure on the vehicle was incurred in 2021. It is now the year 2023.

8	<p>Section III: Findings and Questioned Costs – Major Federal Programs (Continued) 2021-05 Federal Agency: U.S. Department of Agriculture Federal Programs: 10.559 Summer Food Service Program for Children * * *</p> <p>Type of Finding: <u>Noncompliance and Significant Deficiency in Internal Control</u></p> <p>Statement of Condition The auditor noted <u>two instances of payments to vendors without specific invoices</u> which the Organization believes were overpayments to those vendors <u>that they are attempting to recover</u>. The uncertainty of collection could result in the loss of these dollars and the future realization of bad debt expense. This demonstrates improper cash management by putting funds at-risk that may be needed for program operations.</p> <p>Criteria or Specific Requirement <u>Cash management policies should be properly followed</u> to preserve sufficient liquidity for program operations. Unallowable costs are costs for which program funds may not be used. <u>They include bad debts.</u></p> <p>Questioned Costs <u>Vendor overpayments of \$316,800 to Afro Produce and \$56,331 to US Halal.</u> * * *</p> <p>(GGFS Ex. 5, at 5030.)</p> <p>NOTE 4 – DUE FROM VENDORS AND EMPLOYEES This amount includes overpayments to two food vendors and one employee as follows:</p> <table style="margin-left: 20px;"> <tr> <td>Overpayment to Vendor #1</td> <td style="text-align: right;"><u>\$ 316,800</u></td> </tr> <tr> <td>Overpayment to Vendor #2</td> <td style="text-align: right;"><u>[\$] 56,331</u></td> </tr> <tr> <td>Overpayment to Employee #1</td> <td style="text-align: right;"><u>[\$] 47,960</u></td> </tr> <tr> <td style="text-align: right;">[Total:]</td> <td style="text-align: right;"><u>\$ 421,091</u></td> </tr> </table>	Overpayment to Vendor #1	<u>\$ 316,800</u>	Overpayment to Vendor #2	<u>[\$] 56,331</u>	Overpayment to Employee #1	<u>[\$] 47,960</u>	[Total:]	<u>\$ 421,091</u>	<p>Appeal Panel: GGFS does not dispute that the current management operated GGFS’s summer program, SFSP. (Jan. 20, 2023 Hrg. Tr. 11:7–11.) As the findings indicate, GGFS’s new management continues to engage in business practices in violation of the program regulations.</p> <p>The noncompliance and significant deficiency in internal control findings regarding paying vendors without specific invoices echo MDE-NPS’s December 14, 2021 findings of serious deficiency that GGFS engaged in unlawful practices such as “the organization cannot support all expense transactions represented on the bank statements.” (GGFS Ex. 8, at 8002.)</p> <p>GGFS’s unsuccessful attempts to recover these overpayments to vendors¹⁴ show that it fails to correct the outstanding items identified by MDE-NPS such as “If no expense documentation exists, the funds must be repaid to the nonprofit food service fund using non-federal Child Nutrition Program funds.” (GGFS Ex. 14, at 14002.)</p>
Overpayment to Vendor #1	<u>\$ 316,800</u>									
Overpayment to Vendor #2	<u>[\$] 56,331</u>									
Overpayment to Employee #1	<u>[\$] 47,960</u>									
[Total:]	<u>\$ 421,091</u>									

¹⁴ GGFS’s “Corrective Action Planned” narrative by its current management attached to the end of the Mazanec report states: “[l]egal action is being considered if communication and accounting records do not resolve the issue.” (GGFS Ex. 5, at 5034.) The six (6)-digit overpayments of federal funds to these vendors took place in 2021. It is now the year 2023. GGFS stated during the hearing that it had its in-house attorney send out demand letters in March and May 2022. (Jan. 20, 2023 Hrg. Tr. 38:8–40:24.) To date, GGFS admittedly has not brought any legal action to recover these funds. (*Id.*)

	<p>The employee overpayment was recovered in the following year, <u>but the overpayments to the two vendors have not yet been recovered.</u></p>	
9	<p>Section III: Findings and Questioned Costs – Major Federal Programs (Continued) 2021-06 Federal Agency: U.S. Department of Agriculture Federal Programs: 10.559 Summer Food Service Program for Children * * *</p> <p>Type of Finding: <u>Noncompliance and Significant Deficiency in Internal Control</u></p> <p>Statement of Condition The Organization made a loan to a vendor in the form of an earnest money payment which was an improper, albeit temporary, use of funds. <u>The loan was repaid by the vendor in the following year.</u> * * *</p> <p>Questioned Cost <u>Temporary loan of \$231,100 to vendor.</u> * * *</p> <p>Cause <u>Inadequate internal controls</u> allowed a decision to be improperly made to extend a loan to a vendor.</p> <p>Recommendation <u>Management</u> should refresh themselves on <u>their own</u> Accounting Policies and Procedures they approved and recognize improper loans such as this from being made. * * *</p> <p>(GGFS Ex. 5, at 5031.)</p>	<p>Appeal Panel: GGFS does not dispute that the current management operated GGFS’s summer program, SFSP. (Jan. 20, 2023 Hrg. Tr. 11:7–11.) As the findings indicate, GGFS’s new management continues to engage in business practices in violation of the program regulations.</p> <p>The auditor points out that the identified noncompliance and significant deficiency in internal control resulted from the current management’s failure to follow “their own Accounting Policies and Procedures they approved[.]” (GGFS Ex. 5, at 5031.) GGFS cannot blame the “prior” management for the current management’s failure to follow its own policies.</p> <p>GGFS applied for the CACFP as a new institution. GGFS’s current management has exhibited significant noncompliance in the actual operation of the SFSP—a program materially similar to the CACFP that took place in the summer months. No matter how well-written GGFS’s policies and procedures appear on paper, MDE-NPS cannot ignore the existing evidence of noncompliance and significant deficiency in GGFS’s actual operation that blatantly run afoul of those policies and procedures that GGFS management drafted and approved.</p>
10	<p>Section III: Findings and Questioned Costs – Major Federal Programs (Continued) 2021-07 Federal Agency: U.S. Department of Agriculture Federal Programs: 10.558 Child and Adult Care Food Program and 10.559 Summer Food Service Program for Children * * *</p> <p>Type of Finding: <u>Noncompliance and Significant Deficiency in Internal Control</u></p> <p>Statement of Condition</p>	<p>Appeal Panel: GGFS’s current management was responsible for meeting the federal deadline. GGFS does not dispute that the audit report was not submitted until December 15, 2022. (Jan. 20, 2023 Hrg. Tr. 34:17–20.)</p> <p>See Row 5 of this Chart for more detailed discussion regarding GGFS’s delays in transmitting the financial statements and completing the federal audit.</p>

<p>The Uniform Guidance report for the year ended December 31, 2021 <u>was not submitted until after its due date</u> of September 30, 2022.</p> <p style="text-align: center;">* * *</p> <p>Effect</p> <p>The Organization <u>did not comply</u> with the reporting requirements established by the Federal Agency.</p> <p style="text-align: center;">* * *</p> <p>(GGFS Ex. 5, at 5032.)</p>	<p><i>See also supra</i>: Subsection III. A. for further discussion of GGFS’s questionable explanation of its failure to meet the federal audit report submission deadline of September 30, 2022.</p>
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C. The Administrative Record Does Not Support GGFS’s Contentions in Its Appeal

35. On December 19, 2022, GGFS appellants submitted their written arguments in support of the appeal (“GGFS’s brief”) as well as 31 exhibits. GGFS appellants make five main arguments against MDE-NPS’s Second Proposed Disqualification Notice. (*See* GGFS Br.) First, GGFS appellants contend that MDE-NPS rehashed alleged issues for which GGFS already provided “overwhelming evidence” to the contrary and that MDE-NPS’s allegations are unfounded. (*Id.*) Second, GGFS appellants claim that MDE-NPS relies on many of the same issues that were rejected by the Appeal Panel in the May 23, 2022 panel decision. (*Id.*) Third, GGFS appellants allege that, procedurally, MDE-NPS failed to provide them with the requisite notice and opportunity to address the alleged serious deficiencies. (*Id.*) Fourth, GGFS appellants state that GGFS has by now gone through a federal single audit performed by a third-party accounting firm, Mazanec, and claim that the audit report shows that the serious deficiencies identified by MDE-NPS have been corrected. (*Id.*) Finally, GGFS appellants argue that MDE-NPS improperly confuses and condemns GGFS by relying on alleged criminal fraudulent conduct by other entities revealed in federal investigation unrelated to GGFS. (*Id.*)
36. GGFS’s first argument of “overwhelming evidence” should be rejected because GGFS has failed to meet its burden of showing that all the outstanding corrective action items have been timely corrected. Even the findings in the audit report compiled by the audit firm retained and in the pay of GGFS do not support this proposition. (*See supra*, Subsections III. A. & B, including Chart 1.)
37. The Appeal Panel disagrees with GGFS’s second argument. Regarding GGFS’s allegation that MDE-NPS relies on many of the same issues that was rejected by the Appeal Panel in the May 23, 2022 panel decision, it is a mischaracterization and the panel decision speaks for itself. The May 23, 2022 panel decision reversed and remanded the previous proposed disqualification *on procedural grounds only and never rejected any substantive findings made by the agency*. That decision directed MDE-NPS to fix procedural insufficiencies on remand, and MDE-NPS’s November 18, 2022 notice to GGFS has segregated issues identified for SFSP only from the issues in GGFS’s general management, operation, and internal control that permeate through GGFS as an organization irrespective of the specific program where the issues might have first surfaced. (*See generally* GGFS Ex. 1.) Because GGFS insists that the institution’s noncompliance resulted from the oversight or wrongdoing of the prior management, it would only make sense for the state agency to determine GGFS’s fitness as a sponsor through the lens

of any and all issues connected with the current management that could reflect upon the institution's overall ability to act as a CACFP sponsor.

38. GGFS's third argument that MDE-NPS did not provide it with the requisite notice or opportunity to respond before moving forward with the second proposed disqualification is unjustified. The second proposed disqualification is based on the same December 14, 2021 serious deficiencies determination after the agency took steps to follow the Appeal Panel's instructions on remand. MDE-NPS is not required to redo all the notices as if it were a brand-new agency action. The USDA Handbook sets forth specific elements that an appropriate response to a serious deficiency notice should include and what constitutes an acceptable corrective action. (*See supra* FOF at para. 11; USDA Handbook, at 16–17.) The USDA Handbook is available to the general public. GGFS, in applying for the CACFP, cannot on the one hand proclaim ignorance of these authorities and on the other hand insist it should have been accepted as a CACFP sponsor. MDE-NPS never prevented GGFS from submitting an amended Corrective Action Plan (CAP). GGFS also attached the management's corrective action narrative to the end of the Mazanec report. (GGFS Ex. 5, at 5033–39.) MDE-NPS's June 27, 2022 letter unequivocally states that GGFS has a continuing obligation to correct the outstanding serious deficiencies through the specified corrective action items enumerated therein notwithstanding the May 23, 2022 panel decision. (GGFS Ex. 14.)
39. Relatedly, GGFS's procedural argument that MDE-NPS has not sent demand letters under 7 C.F.R. § 225.12 to recover the SFSP overpayments is misplaced. (GGFS Br. at 12.) MDE-NPS's November 18, 2022 notice states that the agency action being taken is a proposed disqualification under 7 C.F.R. § 226. (GGFS Ex. 1.) It was not a separate action to recover SFSP overpayments. The notice also states that MDE-NPS would issue separate notices under 7 C.F.R. § 225 to address issues specific to SFSP.
40. GGFS's fourth argument is that the institution has by now corrected all the serious deficiencies identified by MDE-NPS and that the audit report by Mazanec supports GGFS's claim. The Appeal Panel disagrees. Entire subsections in this panel decision are dedicated to discussing the Mazanec report, and the Appeal Panel concludes that the findings in the audit report do not support GGFS's proposition. (*See supra*, Subsections III.A. & B, including Chart 1.)
41. In addition to the audit report, elsewhere in GGFS's administrative appeal record also undermines GGFS's allegations in its brief that all of GGFS's serious deficiencies have been corrected. For instance, regarding MDE-NPS's finding that GGFS has not submitted all licenses for its sites including Bako Trading, GGFS claims that its Exhibit 23 is an affidavit by Abdirisak Abdi that he had confirmed with the Minnesota Department of Education that Bako Trading does not require a license. (GGFS Br. at 16.) GGFS's Exhibit 23, however, is an email, not an affidavit. And in that email, MDE's Jenny Butcher asked GGFS's Priya Morioka to "provide assurance that you will contact all health departments having jurisdiction over the locations of your At Risk sites to ensure you are following local and state regulations[,]” to which Ms. Morioka replied "Lets [*sic*] talk about this after our 10:30 meeting.” (GGFS Ex. 23.)
42. For another example, one of the serious deficiencies identified by MDE-NPS is that GGFS did not provide procurement documentation for its catering contracts. (GGFS Ex. 1, at 1003.) GGFS contends that it does not need to provide procurement documentation because MDE-NPS's Jenny Butcher informed GGFS on May 14, 2021 that federal regulations at 2 C.F.R. § 200.320(c)(3) allow non-competitive procurement

during a public emergency under certain circumstances. (GGFS Br. at 22–24, citing GGFS Ex. 30.) The relevant regulatory provision reads:

There are *specific circumstances* in which noncompetitive procurement can be used. Noncompetitive procurement can *only* be awarded *if* one or more of the following circumstances apply:

* * *

(3) The public exigency or emergency for the requirement *will not permit a delay resulting from publicizing a competitive solicitation*;

* * *

2 C.F.R. § 200.320(c)(3) (emphasis added). The above-cited language indicates that a public emergency does not automatically grant a waiver of competitive procurement. The public emergency must be such that it “will not permit a delay resulting from publicizing a competitive solicitation.” (*Id.*)

43. GGFS’s Exhibit 10 is an email thread from late October to early November 2021 where MDE-NPS’s Jeanette Johnson-Reed informed GGFS’s in-house counsel, Jordan Sisto, that “[s]tate agency approval is required whenever there is a formal procurement, which is defined by exceeding the threshold of \$250,000 annually.” (GGFS Ex. 10, at 10001.) Ms. Johnson-Reed stated that she could not quite tell from the documents [Sisto] sent if the amount of the resulting contract would exceed \$250,000.” Ms. Johnson-Reed further informed Mr. Sisto that “MDE is actually working on a template for CACFP sponsors when the procurement of a vended meals provider exceeds the large purchase threshold.” (*Id.*)
44. There was nothing in the correspondence provided in GGFS’s exhibits or the entire administrative record that GGFS invoked the public emergency waiver by demonstrating GGFS’s situation would “not permit a delay resulting from publicizing a competitive solicitation.” 2 C.F.R. § 200.320(c)(3). All that the administrative record presents is that GGFS provided contracts to MDE-NPS that were not competitively procured, and there was utterly no evidence that GGFS effectively invoked 2 C.F.R. § 200.320(c)(3) by presenting documentation of justifying circumstances. In ensuring GGFS’s compliance with CACFP performance standards, when reviewing GGFS’s applications, MDE-NPS is authorized by federal regulations to use its discretion in determining whether an application *establishes to MDE-NPS’s satisfaction* that the applicant institution meets the performance standards. *Id.* In other words, GGFS has the burden of demonstrating to MDE-NPS’s satisfaction that its documents are in place to prove GGFS’s qualification to participate in the program. Any attempt by GGFS to shift the burden onto MDE-NPS must be rejected. As MDE-NPS answered when the Appeal Panel asked a question regarding GGFS’s claim of waiver:

Gar Gaar was applying for a number of months, they were working with us for a number of months, we had a number of technical assistance calls.

So many times the noncompetitive procurement is in times of emergency, like when a contract is ended abruptly and someone just needs to go out and find food or need to get a contract in place. That wasn't this situation. There w[ere] months of planning involved. There should have been proper procurement.

* * *

They need to show the documentation of why they used [noncompetitive procurement]. We need to see anything, right? Show us any documentation.

All that's been provided is the contract. We know there's a contract. We've seen the contract in the applications, we've seen the contract from before. We need to know why you chose that contract. Was there proper procurement in place? Was there noncompetitive emergency procurement? Either way there should be some sort of documentation as per 2 CFR 200 and just your general financial standards.

(Jan. 20, 2023 Hrg. Tr. 30:23–32:22.)

45. For these reasons, GGFS's fourth argument that all of its outstanding serious deficiencies have by now been cured must fail.
46. GGFS's fifth and last contention is that MDE-NPS "judge[s]" and "condemn[s]" GGFS "based on the alleged misconduct of other, unrelated entities" such as Feeding Our Future (GGFS Br. at 26). At the hearing, GGFS insisted that "there is no evidence of intentional fraud." (Jan. 20, 2023 Hrg. Tr. 43:3–7.) In addressing GGFS's argument related to the federal food programs fraud, the Appeal Panel takes judicial notice of the ongoing federal investigation into the food programs fraud and the federal indictments deriving therefrom.
47. In the Second Proposed Disqualification Notice dated November 18, 2022, MDE-NPS correctly¹⁵ identifies 7 C.F.R. § 226.6(c)(1) as the regulatory basis for its action. To move forward with proposed disqualification, MDE-NPS is not required to prove GGFS knowingly submitted fraudulent claims or intentionally committed fraud. Instead, the state agency only needs to establish that, in reviewing GGFS's application, it determines that the institution has committed one or more serious deficiencies that "affect[] the institution's ability to administer the Program in accordance with Program requirements." 7 C.F.R. § 226.6(c)(1)(ii)(B). Under the applicable regulations, GGFS's or its principals' being federally indicted or committing intentional fraud is not a condition precedent for MDE-NPS to find sufficient legal grounds to propose to disqualification GGFS appellants. Therefore, GGFS's fifth contention is a strawman argument and should be rejected.
48. In light of the entire administrative record that amply demonstrate that GGFS's management has violated a number of program requirements in their business practices, which has caused significant loss

¹⁵ Previously, MDE-NPS unnecessarily cited a regulatory provision that required proof of knowing submission of false or fraudulent claims, which was part of the reason the May 23, 2022 panel decision reversed and remanded the first proposed disqualification. (GGFS Ex. 2, at 2007, n. 6.)

of federal funds and compromised program integrity. *See supra* Subsections III. A, B, and C. These violations manifest “conscious indifference to regulatory requirements,” are “problems of noncompliance frequently recurring at the same institution,” appear to be “clear violation of Program requirements” rather than a one-time oversight, and “undermin[e] the intent or purpose of the CACFP such as misuse of funds for non-Program purposes[.]” (*See* USDA Handbook, at 13–14.) The Appeal Panel, therefore, concludes that MDE-NPS’s November 18, 2022 proposed disqualification action should be affirmed as to the GGFS appellants.

49. The November 18, 2022 proposed disqualification action should be vacated and remanded as to Mohammed Sharif Maruf for the reasons set forth under Subsection III. D., below.

D. Sufficiency of Notice of Adverse Agency Action upon Mohammed Sharif Maruf

50. At the hearing, GGFS’s attorney Barbara Berens stated that Mr. Maruf was fired and then replaced by GGFS’s current CEO, Khadija Ali. (Jan. 20, 2023 Hrg. Tr. 21:13–23:9.) Ms. Ali stated that she and GGFS’s current COO/CFO, Priya Morioka, “never worked with Feeding Our Future.” (*Id.*) MDE-NPS’s Emily Honer disputed Ms. Ali’s testimony and stated that, in September 2021, Ms. Morioka submitted GGFS’s CACFP application in which the Principal Identification Form listed Mr. Maruf as the president and treasurer. (*Id.* at 25:2–26:4.) Ms. Honer further states that Mr. Maruf was not removed by GGFS until October 2021. (*Id.*)
51. The Appeal Panel’s review of the Principal Identification Form dated August 5, 2021 confirms that Mr. Maruf was listed as the president and treasurer of GGFS when Ms. Morioka submitted GGFS’s September 2021 application to which this form was attached. (*See* GGFS Principal Identification Form dated Aug. 5, 2021.) The form states that Mr. Maruf owns a company, Independent Trucking, and lists “1575 Sarazin Street, Apt. 212, Shakopee, MN 55379” as Mr. Maruf’s address.
52. On GGFS’s second Principal Identification Form dated October 2021 (no date), Mr. Maruf is no longer listed as a board member. (*See* GGFS Principal Identification Form dated October 2021.)
53. According to Ms. Honer, MDE-NPS received two CACFP applications from GGFS—one in September and the other in October 2021 (September being the end of the previous program year). MDE-NPS ended up denying both applications. (Jan. 20, 2023 Hrg. Tr. 25:21–26:4.)
54. Mr. Maruf’s last known address in Shakopee on file with MDE-NPS is found in the August 5, 2021 Principal Identification Form. Mr. Maruf did not personally appear at the January 20, 2023 hearing, nor did he appear through legal counsel. The representatives of GGFS who did appear at the hearing stated that they have no affiliation with Mr. Maruf. As a result, it is unknown whether Mr. Maruf received proper notice from MDE-NPS for the November 18, 2022 proposed disqualification. At the hearing, MDE-NPS requested permission to follow up with the Appeal Panel regarding notice to Mr. Maruf. (*Id.* at 26:5–13.) The Appeal Panel directed MDE-NPS and GGFS to submit their respective follow-up information in writing post-hearing no later than January 27, 2023. (*Id.* at 40:2–41:15.)
55. MDE-NPS’s January 27, 2023 letter to the Appeal Panel states that the agency sent Mr. Maruf hard copies of documents pertaining to the November 18, 2022 notice “via United States Postal Service USPS” because Mr. Maruf’s email address was not available to the agency. (*See* MDE-NPS Jan. 27, 2023

Letter to Appeal Panel.) MDE-NPS states that it “assumes this was received as it was not returned by the USPS.” (*Id.*) MDE-NPS also represents that it used the same mailing process for Mr. Maruf when sending out the December 14, 2021 Serious Deficiency Notice and that, as to that notice, was able to confirm through an assigned USPS tracking number that Mr. Maruf did receive the notice. (*Id.*)

56. Under the CACFP regulations, notices can be sent by “certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email[.]” 7 C.F.R. § 226.2. When a notice is undeliverable to an individual, it is considered received “five days after being sent to the addressee’s last known mailing address, facsimile number, or email address.” *Id.* The Shakopee address appears to be Mr. Maruf’s last known address on file with MDE-NPS. MDE-NPS’s January 27, 2023 letter to the panel does not expressly state it sent the notice to Mr. Maruf by certified mail with return receipt requested or equivalent private delivery service. Based on the circumstances described by MDE-NPS surrounding the provision of the November 18, 2022 proposed disqualification notice within the four corners of its letter, it does not appear that MDE-NPS has established provision of sufficient constructive notice to Mr. Maruf. As a result, the adverse agency action set forth in the November 18, 2022 proposed disqualification notice cannot take effect against Mr. Maruf at this time and should be vacated and remanded. MDE-NPS may cure the procedural insufficiency by resending its notice to Mr. Maruf in a manner consistent with the CACFP procedures.

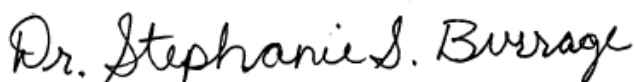
FINAL DETERMINATION

For all the reasons stated above, and based on the information reviewed, the Appeal Panel affirms MDE-NPS’s November 18, 2022 second proposed disqualification agency action as to GGFS (the institution), Khadija Ali (Executive Director), Priya Morioka (Chief Operating Officer/Chief Financial Officer), Mark Ritchie (Board Member), DC Zeynep Tuzcu, (Board Member), and Mohamed Horia (Site Representative).

The Appeal Panel vacates and remands MDE-NPS’s November 18, 2022 second proposed disqualification agency action as to Mohammed Sharif Maruf in order to cure the procedural insufficiency in providing Mr. Maruf with proper notice of the agency’s action.

In accordance with 7 C.F.R. § 226.6(k)(5)(x), the determination by the Appeal Panel is the final administrative determination regarding the appellants.

Respectfully,



Dr. Stephanie Burrage, Appeal Panel Chair
Mary Weigel, Appeal Panel Member
Kristie Anderson, Appeal Panel Member

CC: Monica Herrera, Director, MDE-NPS
Marty Casserly, Attorney for MDE-NPS

DOCUMENTS REVIEWED

MDE's Appeal Panel considered the following documents submitted or referenced by MDE-NPS and GGFS Appellants:

1. Federal Regulations: 7 C.F.R. Part 226; 7 C.F.R. Part 225; 2 C.F.R. Part 200
2. Child and Adult Care Food Program Appeal Procedure
3. November 18, 2022, MDE-NPS Proposed Termination and Disqualification Letter
4. December 2, 2022 GGFS Appellants' Notice of Appeal Request regarding NDE-NPS's Proposed Disqualification, and Request for Hearing
5. December 19, 2022 MDE Appeal Acknowledgement Letter
6. January 10, 2023 Notice of Hearing
7. Hearing Transcript for Admirative Appeal Hearing Dated January 20, 2023
8. Hearing Transcript for Admirative Appeal Hearing Dated April 28, 2022
9. GGFS's Summer Food Services Program (SFSP) permanent agreement with MDE, executed on June 30, 2021
10. MDE-NPS Submissions:
 - a. June 27, 2022 MDE-NPS Letter to GGFS Regarding Response to Reversed and Remanded Disqualification Appeal
 - b. November 18, 2022, MDE-NPS Proposed Termination and Disqualification Letter
 - c. MDE-NPS Review of Serious Deficiency Corrective Action Plan
 - d. December 14, 2021 MDE-NPS Letter CACFP Sponsor Application Denial for Program Years 2021 and 2022
 - e. December 14, 2021 MDE-NPS Serious Deficiency Letter to GGFS
 - f. CACFP Sponsor Application Findings
 - g. USDA Child and Adult Care Food Program Handbook: Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations
 - h. GGFS Summer Food Service Program Agreement executed June 30, 2021
 - i. February 25, 2022 MDE Panel Decision Regarding Denial of GGFS's CACFP Application
 - j. May 23, 2022 MDE Panel Decision Regarding Decision of Proposed Disqualification
 - k. November 18, 2022 MDE-NPS Late Audit Notice to GGFS
 - l. GGFS Principal Identification Form Dated October 2021 ("10/21")
 - m. GGFS Principal Identification Form Dated August 5, 2021
 - n. Folder Named "July 2022 Response":
 - i. GGFS Accounting and Financial Policy and Procedures - Youth Leadership Academy Rev. 7 19 22
 - ii. Subfolder "Afrik Documents - SFSP 2021" and Its Contents

- iii. Subfolder “Afro Produce Documents - SFSP 2021” and Its Contents
- iv. Subfolder “Bako Samo Documents - SFSP 2021” and Its Contents
- v. Subfolder “Gab Halal Documents - SFSP 2021” and Its Contents
- vi. Subfolder “Hajis Kitchen Documents - SFSP 2021” and Its Contents
- vii. Subfolder “Hajis Kitchen Documents - SFSP 2021” and Its Contents
- viii. Subfolder “Hooyos Cafe Documents - SFSP 2021” and Its Contents
- ix. Subfolder “Hooyos Kitchen Documents - SFSP 2021” and Its Contents
- x. Subfolder “Midland Wholesalers Documents - SFSP 2021” and Its Contents
- xi. Subfolder “Premium Fresh Produce Documents - SFSP 2021” and Its Contents
- xii. Subfolder “S&S Documents - SFSP 2021” and Its Contents
- xiii. Subfolder “Sahara Grill Documents - SFSP 2021” and Its Contents
- xiv. Subfolder “The Produce Documents - SFSP 2021” and Its Contents
- xv. Subfolder “US Halal Documents - SFSP 2021” and Its Contents

11. GGFS Appellants Submissions:

- a. Letter: December 2, 2022 GGFS Appellants’ Notice of Appeal Request regarding NDE-FNS’s Proposed Disqualification, and Request for Hearing
 - i. Envelope
 - ii. Mail Receipt
 - iii. Return Receipt
 - iv. USPS Tracking Result
- b. December 13, 2022 Email Thread regarding proof of timeliness of GGFS submitting appeal request
- c. December 19, 2022 GGFS Administrative Appeals Brief
- d. GGFS Exhibit Index: Appeal Exhibits December 2022 (31 exhibits in total)
- e. Exhibit 1. Second Proposed Disqualification by the MDE to GGFS, dated November 18, 2022
- f. Exhibit 2. Opinion by First MDE Appeal Panel to GGFS, dated May 23, 2022
- g. Exhibit 3. First Proposed Disqualification by the MDE to GGFS, dated March 8, 2022
- h. Exhibit 4. Email re Licensing Standards and Notifications re Sites in Bloomington and Richfield by MDE, dated September 7, 2021
- i. Exhibit 5. Audit by Mazanec, Bauer & Associates, PLC, dated December 9, 2022
- j. Exhibit 6. Contract between MDE and GGFS for Summer Food Service Program, dated June 18, 2021
- k. Exhibit 7. Email from GGFS to MDE re Application for CACFP Sponsorship, dated August 5, 2021
- l. Exhibit 8. Serious Deficiency Notice from MDE to GGFS, with Grid, dated December 14, 2021
- m. Exhibit 9. Article by the Sahan Journal re MDE Commissioner Publicly Addresses Alleged Fraud, dated April 4, 2022
- n. Exhibit 10. Emails to MDE referencing Requests for Proposals
- o. Exhibit 11. Written Denial of CACFP Application by MDE to GGFS, with Grid, dated December 14, 2021
- p. Exhibit 12. Review of Serious Deficiency Corrective Action Plan by MDE to GGFS, dated March 8, 2022

- q. Exhibit 13. Appeal of the MDE Proposed Disqualification and Termination by GGFS, dated April 7, 2022
- r. Exhibit 14. Letter by MDE to GGFS in Response to First Appeal Panel's Rejection of MDE's First Proposed Disqualification, dated June 27, 2022
- s. Exhibit 15. Letter by GGFS to MDE with Corrective Action Documents in Response to MDE Request, dated July 25, 2022
- t. Exhibit 16. USDA Handbook – Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations
- u. Exhibit 17. Corrective Action Plan by GGFS to MDE, dated January 11, 2022
- v. Exhibit 18. Article by the Star Tribune re State Bars Third Major Provide of Meals, dated March 9, 2022
- w. Exhibit 19. SharePoint Directory Screenshot for GGFS Appeal of MDE's First Proposed Disqualification
- x. Exhibit 20. Engagement Letter between Eide Bailly and GGFS, dated November 16, 2021
- y. Exhibit 21. The Produce Inspection Report by MN Dept of Agriculture, dated September 8, 2021
- z. Exhibit 22. Email re Bako Trading not Requiring Health License from City by Erik Solie, dated December 13, 2021
- aa. Exhibit 23. Email re Licensing Standards and Notifications re Sites in Bloomington and Richfield by MDE, dated September 7, 2021
- bb. Exhibit 24. Balance Sheet of GGFS as of November 30, 2021
- cc. Exhibit 25. Payroll Details Report of GGFS for January through December 2021
- dd. Exhibit 26. GGFS Management Plan with Attachments
- ee. Exhibit 27. Emails Regarding Overpayment to GGFS by MDE and Corrections, September through December 2021
- ff. Exhibit 28. Wire Transfer Receipt for Overpayment Reimbursement to MDE by GGFS, dated December 23, 2021
- gg. Exhibit 29. Revision to GGFS Accounting and Financial Policies and Procedures, dated June 19, 2022
- hh. Exhibit 30. Email re Correct Regulations and Procurement Process by MDE Jenny Butcher to GGFS, dated May 14, 2021
- ii. Exhibit 31. Email Confirming Audit Submission by GGFS from the Federal Audit Clearinghouse, dated December 15, 2022

12. Pre-Hearing Submissions on or after December 20, 2022:

By MDE-NPS:

- a. MDE-NPS Appeal Summary and Timeline
- b. 7 CFR Part 226 -- Child and Adult Care Food Program
- c. December 9, 2022 GGFS Letter to MDE-NPS's Emily Honer, which encloses GGFS's Preliminary Draft Audit Report prepared by the audit firm, Mazanec, Bauer, & Associates, P.L.C.
- d. Indictment in *United States v. Haji O. Salad, et al.*, Case No. 0:22-cr-00226-NEB-TNL (Dist. Minn., unsealed September 20, 2022)

By GGFS:

- e. December 21, 2022 Email from Barbara Berens to Monica Herrera attaching letter
- f. December 21, 2022 Letter by Barbara Berens regarding MDE-NPS's documentation submitted after December 19, 2022

13. Post-Hearing Submissions:

- a. MDE-NPS January 27, 2023 Post-Hearing Factual Clarification Letter
- b. GGFS January 27, 2023 Post-Hearing Factual Clarification Letter

14. Appeal Correspondence:

- a. November 18, 2022 Email Thread regarding GGFS attaching Late Audit Notice and Proposed Disqualification Notice
- b. Three system-generated delivery notices of emails sent to GGFS's organizational email address (one dated December 14, 2022 and two dated December 19, 2022).
- c. December 14, 2022 Email from Allison Loomis providing access to SharePoint folder
- d. December 14, 2022 Email from Allison Loomis providing instructions on accessing SharePoint
- e. December 19, 2022 Email from Allison Loomis attaching Appeal Acknowledgement