APPELLANT: The Cheder
129 Elmwood Avenue
Brooklyn, NY 11230

RESPONDENT: New York State Education Department
Child Nutrition Program Administration
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

STATE: New York; Sullivan County

In the Matter of the Appeal by

THE CHEDER

from a decision by the New York State Education Department denying their application to participate in the 2011 Federal Summer Food Service Program

DECISION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the Summer Food Service Program found at 7 CFR Part 225, when it denied appellant's application to participate in the 2011 Summer Food Service Program.

This Decision is rendered this 17th day of August 2011.

Maureen Lavare
Maureen Lavare
Hearing Officer

LIST OF REPRESENTATIVES

For the Appellant:
Dina Gutfreund
The Cheder
129 Elmwood Avenue
Brooklyn, NY 11230

For the Respondent:
Frances O'Donnell
Coordinator
Child Nutrition Program Administration
New York State Education Department
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

Paula Tyner-Doyle
School Food Programs Specialist III
Child Nutrition Program Administration
New York State Education Department
99 Washington Avenue, Room 1623
Albany, NY 12234-0055

DOCUMENTS SUBMITTED AND REVIEWED

FOR THE APPELLANT

1. August 3, 2011 letter from Dina Gutfreund of The Cheder responding to hearing officer Maureen Lavare's July 26, 2011 letter
2. July 20, 2011 letter from Dina Gutfreund of The Cheder to hearing officer Maureen Lavare requesting an appeal of the State Education Department's, Child Nutrition Program's denial of The Cheder's Summer Food Service Program 2011 Sponsor Application/Agreement
3. July 11, 2011 letter from Kimberly Vumbaco, School Food Program Specialist 2 of the State Education Department's, Child Nutrition Program advising The Cheder that its application to operate a 2011 Summer Food Service Program is not approved
4. January 5, 1994 letter from the Internal Revenue Service to The Cheder stating that the IRS has determined that The Cheder is exempt from federal income tax under Section 501(a) of the Internal Revenue Code
5. June 30, 2008 Town of Rockland Building Department Certificate of Compliance issued to 164 Knickerbocker Road

6. June 25, 2011 New York State Department of Health permit issued to operate Camp Bei Kyta
7. Contract between Camp Bei Kyta and The Cheder regarding camp from July 4 through 29, 2011

FOR THE RESPONDENT

1. August 8, 2011 letter from Frances O'Donnell, Coordinator of the State Education Department's, Child Nutrition Program to hearing officer Maureen Lavare explaining the State Education Department's, Child Nutrition Program's position in this appeal
2. Copies of sections from 7 CFR Part 225
3. April 8, 2011 memorandum from the United States Department of Agriculture
4. New Site Information Sheet-Camp Sites form submitted by The Cheder to the State Education Department's, Child Nutrition Program for its July 4 through 29, 2011 camp program
5. Contract between Camp Bei Kyta and The Cheder regarding camp from July 4 through 29, 2011 (first page only)

PROCEDURAL BACKGROUND

By letter dated July 20, 2011 The Cheder requested an appeal of the State Education Department's, Child Nutrition Program's ("respondent") decision to deny The Cheder's proposed site for its 2011 Summer Food Service Program ("SFSP") (appellant's document # 2). The Cheder ("appellant") was notified of respondent's decision to deny its proposed site by letter dated July 11, 2011 (appellant's document #3). On July 26, 2011 I notified the parties that I found the request for appeal to be timely and required both parties to submit all documentation they wanted considered as part of the appeal to my office, with a copy to the opposing party, by August 8, 2011. Both parties submitted documentation for my consideration.

FINDINGS

The primary purpose of the SFSP is to provide food service to children from needy areas during periods when area schools are closed for vacation (7 CFR §225.1). Appellant submitted an application to respondent to operate a SFSP at a residential camp from July 4 through 29, 2011. If approved, appellant would be a SFSP "sponsor." A sponsor is defined, in part, in the SFSP's federal regulations as a public or private nonprofit residential summer camp which provides summer food service similar to that made available to children during the school year under the National School Lunch and School Breakfast programs (7 CFR §225.2). As part of its application, appellant submitted a form to respondent entitled "New Site Information Sheet–Camp Sites" and a copy of its contract with Camp Bei Kyta, the camp owner (respondent's documents # 4 and 5). These documents show that appellant is using Camp Bei Kyta ("CBK"), located at 641 Knickerbocker Road, Livingston Manor, New York for its 2011 residential summer camp. There is no dispute that CBK is a for-profit corporation.

The SFSP's federal regulations state that:

> "[N]o applicant sponsor shall be eligible to participate in the Program unless it: (1) Demonstrates financial and administrative capability for program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service" (7 CFR §225.14[c][1]), and
>
> "[S]ponsors which are… private nonprofit organizations, will only be approved to administer the Program [SFSP] at sites where they have direct operational control. Operational control means that the sponsor shall be responsible for: (i) Managing site staff, including the hiring, terminating and determining condition of employment for site staff; and (ii) Exercising management control over Program [SFSP] operations at sites throughout the period of Program [SFSP] participation by performing the functions specified in 225.15" (7 CFR §225.14[3][i] and [ii]).

In addition to the federal regulatory requirements for sponsors, the United States Department of Agriculture (USDA) which maintains oversight over the SFSP, issued a memorandum dated April 8, 2011which allows State agencies, such as respondent, to approve meal service sites which are not identified as non-profit in certain limited circumstances (respondent document #3). Previous to this memorandum, the USDA strictly required that only meal service sites identified as non-profit could be approved SFSP sites. The memorandum states, however, that the site "must be operated under the sponsorship of an eligible public or private non-profit service institution." The memorandum also states that "[E]nrolled for-profit sites or for-profit camps remain ineligible for participation in the SFSP" (respondent's document #3).

Respondent asserts that appellant's New Site Information Sheet–Camp Sites and its contract with CBK demonstrate that appellant did not intend to maintain direct operational and administrative control over the foodservice at CBK and therefore it could not be approved as a sponsor for the 2011 SFSP (respondent's documents #4 and 5 and appellant's document #7). Appellant asserts that during the month of July it relocates to CBK, where it simply continues it's learning and recreational programs. Further, appellant states that:

> "Bei Kyta has absolutely no jurisdiction over The Cheder. The Cheder runs its own program and has complete operational control over the learning and recreational activities. The camp site is merely rented. The Cheder purchases the food from Bei Kyta. Our staff and volunteers direct the daily program, serve the meals and take attendance" (appellant document #1)

Appellant's contract with CBK states that CBK is responsible for preparing meals and purchasing the food for the SFSP. Indeed, the contract states that CBK is to receive $10.25 per boy, per day for three meals and a supplement to "be prepared and served in accordance with the SFSP" (respondent document #7 and appellant document #5). The only clear role that appellant plays with respect to the meals is that they will provide staff to assist with the meal services (appellant document's #1 and 7). The contract does not address that appellant is to manage the site staff (7 CFR §225.14[d][3][i]), to the contrary, it appears that appellant has no management responsibilities over the CBK staff in charge of meals (appellant document #7). Nor does it appear that appellant will be exercising much, if any, management control over the SFSP at CBK (7 CFR §225.14 [d][3][ii]). The contract does not address, and it appears that appellant is not taking responsibility for program training, site visits and record keeping as is required under 7 CFR §225.15. Although appellant states that it is merely renting the use of the site, according to its contract, CBK is actively involved in the operation of the camp with appellant. I note that provision number 7 of the contract states that it is CBK that will register and bill the students. Additionally, it will provide medical personnel and lifeguards during the month-long camp session (appellant document #7, see provisions #20 and 21). It is also evident that, among these other services, appellant intended to have CBK fully operate its SFSP with the exception of providing staff, or campers, to serve the meals (appellant document #7, provision #18).

While it is commendable that appellant wishes to move its students to a rural setting for a month during the summer, in order to become a sponsor of a SFSP appellant must understand and agree to undertake the responsibilities required by the federal regulations at 7 CFR Part 225. The federal regulations do not allow a sponsor to "contract out for the management responsibilities of the SFSP" (7 CFR §225.15[a][3]). Appellant has not provided adequate documentation and information that it has direct operational control over the CBK site and therefore, I cannot find that respondent's decision to deny appellant's 2011 SFSP was unreasonable.

Further, even if appellant was approved as a 2011 SFSP sponsor, the CBK site would not qualify as an approvable site for the SFSP because it is a for-profit corporation. As mentioned above, the USDA recently issued guidance addressing the use of for-profit sites for the SFSP. Although that guidance makes limited exceptions, it specifically states that for-profit camps remain ineligible for participation in the SFSP (respondent's document #3). Thus, the CBK site is not an approvable SFSP site.

CONCLUSION

I find that respondent acted in accordance with the Federal Child Nutrition Program's regulations, specifically those that pertain to the Summer Food Service Program found at 7 CFR Part 225 when it denied appellant's application to participate in the 2011 Summer Food Service Program.