

APPELLANT: Congregation Anshei Sternberg
2424 Ave L
Brooklyn, NY 11210

RESPONDENT: New York State Education
Child Nutrition Program Administration
89 Washington Avenue, Room 375EBA
Albany, New York 12234-0055

STATE: New York, County of Sullivan

In the Matter of the Appeal of

Congregation Anshei Sternberg

From a Decision by the New York State Education
Department's Child Nutrition Program denying participation as
a sponsor in the 2022 Summer Food Service Program

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} **DECISION**
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I find that the 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 22, when it denied the Appellant's application to participate in the 2022 Summer Food Service Program. Based on the record presented to me, the New York State Education Department's determination to deny participation by Congregation Anshei Sternberg was reasonable, rational and in accordance with the regulations. The appeal is therefore denied.

This Decision is rendered this 28th day of November 2022.



Aaron M. Baldwin
Impartial Hearing Officer

**LIST OF
REPRESENTATIVES:**

For the Appellant

Morton M. Avigdor, Esq.
1532 East 24th Street
Brooklyn, NY 11210

Rabbi Dov Perkal
Executive Director
Congregation Anshei Steinberg
2424 Avenue L
Brooklyn, NY 11210

For the Respondent

Stacey Stump, Esq.
New York State Education Department
Child Nutrition Program Administration
89 Washington Ave, Room 375 EBA
Albany, NY 12234

Jennifer Knapp, Megan Taney & Craig Alread
Program Staff
Kimberly Vumbaco
Program Director
Child Nutrition Program
NYS Education Department
89 Washington Avenue, Room 375 EBA
Albany, NY 12234

DOCUMENTS SUBMITTED AND REVIEWED

For the Appellant

1. Letter dated November 15, 2022, from Morton Avigdor, Esq. on behalf of Appellant (labeled pages 1-2) along with attached email exhibits dated between August 5 and 11, 2022 (pages 3-10).¹

For the Respondent

Letter brief dated October 28, 2022 with exhibits as follows:

1. Appellant's 2022 Summer Food Service Program Sponsor Application and Non-Profit Organization Financial Administration Form. (Ex. A)
2. Appellant's New Site Information Sheets: Industrial Development Agency- Girls Division and Industrial Developmental Agency- Boys Division. (Ex. B)
3. Appellant's Incorporation Documentation, including Appellant's Certificate of Incorporation, By Laws, Organizational Staff Chart. (Ex. C)
4. Appellant's, FEIN #85-3424495, 501(c)(3) documentation. (Ex. D)
5. E-mail notification to Appellant informing them their SFSP application was incomplete/inaccurate. (Ex. E)
6. Email notifications to Appellant asking for clarification on the ownership and operation of the proposed SFSP sites. (Ex. F)
7. Email notifications to Appellant requesting cost documentation. (Ex. G)
8. Code of Federal Regulations Title 7 Part 225 and Title 2 Part 200 (available online).
9. NYSED SFSP staff timeline and phone log, an internal work product prepared for the IHO in the instant appeal. (Ex. H)
10. USDA Memo: "For-Profit Locations as Meal Sites in the Summer Food Service Program" dated April 8, 2011. (Ex. I)
11. NYSED's letter to Appellant, dated September 16, 2022. (Ex. J)

Hearing Officer's Exhibits

1. Letter from Appellant dated September 23, 2022 requesting an appeal hearing.
2. Letter dated October 4, 2022, acknowledging receipt of the request for an appeal and scheduling pre-hearing conference.
3. Letter dated October 13, 2022 confirming the matters discussed and decided at the pre-

¹ Counsel for the Sponsor previously submitted an email dated October 19, 2022 (*see*, Hearing Officer Exhibit 5) followed by 61 subsequent emails with various documents. I confirmed at the hearing that Mr. Avigdor intended the November 15, 2022 letter and attachments totaling 10 pages to replace anything previously submitted on behalf of the Appellant and, along with the records provided by the Program Office/Respondent, to constitute the submissions of Appellant on appeal.

- hearing conference held on October 13, 2022, and scheduling the hearing, etc.
4. Letter dated October 18, 2022, confirming that, at the Sponsor/Appellant's request, the hearing would be rescheduled to be held on November 22, 2022, beginning at 1:30 pm at the State Education Department, 89 Washington Ave., Rm. EB 150, Albany NY 12234.
 5. Email from counsel for Appellant dated October 19, 2022.

BACKGROUND

The following facts are established through the record and the testimony of the above representatives at the hearing.

On or about July 20, 2022, Congregation Anshei Sternberg (hereinafter sometimes referred to as the "Congregation" or "Appellant" or "Applicant" or Sponsor") submitted an application as a sponsor at two (2) sites in Sullivan County, New York, for the 2022 Summer Food Service program (SFSP) (Exhibit A). The Congregation did not apply to operate the SFSP for 2022 within the usual annual deadline, but the application was nonetheless timely based upon the Keep Kids Fed Act (KKFA),² and associated waivers by the United States Department of Agriculture (USDA), which together extended SFSP operators the ability to offer closed enrolled sites in areas which did not otherwise qualify and also allowed not for profit organizations to apply participate in the 2022 SFSP after the usual deadline.³ The waiver noted, however, that all other requirements in 7 CFR Part 225 remained in effect.⁴

Upon review of the Congregation's application, NYSED noticed several deficiencies and areas where additional information or documentation was needed. NYSED Program Staff then worked with Appellant on numerous occasions between July 22 and September 16, 2022, both by phone and email, to offer technical assistance in submitting a complete and correct application and to allow Appellant the opportunity to provide clarification on eligibility of the sites. (Exhibits E, F, G and H). Much of these interactions focused on, among other issues, whether the Sponsor had full control, authority, or responsibility over the programs at the two site locations for which it applied to operate the SFSP as required by the Federal regulations. This was because information and documentation submitted by the Congregation revealed numerous different entities with some involvement or interest in the sites, including one for-profit company. Numerous emails were also exchanged between the Applicant and Program Staff regarding outstanding documents, including "payee forms" which were necessary to provide access to the State's system for submitting claims. (See, Exhibits F-G and Appellant's pp. 3-10). The payee form was approved and access granted to the financial system on August 11, 2022. *Id.*

² Public Law No: 117-158, available at: [S.2089 - 117th Congress \(2021-2022\): Keep Kids Fed Act of 2022 | Congress.gov | Library of Congress](https://www.congress.gov/117/legislation/2021/2089)

³ See, [Summer Food Service Program | Child Nutrition | NYSED](#)

⁴ To provide training and technical assistance on program operations, NYSED held multiple live webinars during this time period. All webinars are recorded and available to access on the Child Nutrition Knowledge Center at any time. In addition, NYSED posted memos notifying SFSP of the availability of the waivers and requirements for program participation. The webinars were held on the following dates: April 5, 6, & 7, 2022, May 19, 2022, June 2, 2022, and July 1 and July 14, 2022. *Id.*

On August 16, 2022, NYSED visited the proposed SFSP sites and met with the authorized official, Dov Perkal, and the other designated representative, Gitty Rosenzweig. Program staff reported that they observed inconsistencies between the information submitted as part of the application and what was observed at the sites. Specifically, Program Staff observed, among other things, that

- There was no organized meal service. The sponsor was not prepared to serve a meal at the time indicated on their application.
- NYSED only observed 20 children at the meal service, a level far below the 950 stated on the application.
- The Appellant did not have adequate supervisory and operational personnel for overall monitoring and management of each site as required, including adequate personnel to conduct the visits and reviews.

During the visit, NYSED discussed with the Appellant that the Congregation may not be approved to operate. The August 16, 2022 site visit left several unanswered questions as to Appellant's role in the program and the proper operation of the sites. In the ensuing weeks, emails were exchanged between the parties with NYSED requesting that the Appellant submit supporting documentation to demonstrate that the program was, in fact, operated by the Appellant within the dates indicated on the application and in accordance with the information on the application and Federal regulations. (*See*, Exhibits G & H). Documents were requested as a result of the site visit as well as other necessary materials for a complete application, including a signed and notarized Single Permanent Agreement (SPA). NYSED deemed the application complete on September 6, 2022.

By letter dated September 16, 2022, NYSED informed Appellant that their Sponsor Application was denied participation in the 2022 SFSP based upon the determination that Appellant does not have full control, authority, or responsibility over the programs at the two site locations for which it applied to operate the SFSP (Exhibit J - Notice of Denial). The denial letter explained that based on the observations during the visit and the review of documents, NYSED determined that the Appellant did not have full control, authority, or responsibility over the programs at the two site locations for which it applied to operate the SFSP, as required in 7 CFR § 225.2 (private nonprofit organization), 7 CFR § 225.14 (c) (1), 7 CFR § 225.14 (d) (3), 7 CFR § 225.14 (d) (6)(i) and 7 CFR § 225.14 (d)(6) (iii). Labor records, food costs and non-food costs documentation submitted on September 6, 2022 to NYSED, for example, demonstrated that program costs are not incurred by the non-profit Sponsor. The documents submitted showed that:

- Payment receipts for Thompson Sanitation Corp are paid by Camp Sternberg/Anna Heller.
- Payment receipts for Westside food and Riviera are paid by The SHMA Camps.
- Cancelled checks were not provided; however, the payroll registers submitted for staff, list Mogenavco LLC as the company.
- Only the invoices for Upstate Dairy and Crusters LLC, list Congregation Anshei Sternberg as the entity the product is being sold to. However, the sponsor did not provide any payment documentation to demonstrate that they paid those invoices and incurred the cost.

- All other food costs and non-food cost invoices were billed to other entities including, Camp Sternberg/Anna Heller, The SHMA Camps, Mogenavco LLC, Magen Avco Sternberg, and Bnos Bais Yaakov of Far Rockaway. The sponsor did not provide documentation that Congregation Anshei Sternberg is doing business as any of these entities.

Additional research and correspondence by NYSED found that:

- The Authorized Official listed on the SFSP application (Exhibit A), Dov Perkal, is listed on the SHMA Camp website as the SHMA Camp Director.⁵
- The other Authorized Official listed on the SFSP application (Exhibit A), Gitty Rosenzweig, is listed on the SHMA camp website as the SHMA Director of Enrollment.⁶
- On the day of the visit, one gentleman did introduce himself to NYSED staff stating that he was in charge of the camp but not the meal service, he stated the landlord runs the meal service, not the camp.
- In an e-mail sent to NYSED on August 9, 2022 the sponsor provided the title insurance and stated that the property is owned by the Sullivan County Industrial Development Agency (IDA), a nonprofit entity and there is a lease with Mogenavco LLC, which is a for-profit entity. (Exhibit F).
- On the day of the visit, Dov Perkal stated to NYSED staff that the meal service is run by the camp owners Mogenavco/SHMA Camps.
- NYSED staff asked what role Congregation Anshei Sternberg served and Dov Perkal stated that they administer the religious activities and the kashrus supervision.

The Department also noted in its letter that the application was denied for the additional reason that the sponsor does not have adequate supervisory and operational personnel for overall monitoring and management of each site as required in 7 CFR § 225.14 (c) (4), including adequate personnel to conduct the visits and reviews required in §§ 225.15 (d) (2) and (3).

This timely appeal followed the September 16, 2022 denial.

STANDARD OF REVIEW

7 CFR § 225.13 requires a State Agency vested with oversight over the SFSP to develop appeals procedures for, among other things, the termination of the participation of a sponsor or a sponsor's site. The Independent Hearing Officer (IHO) is the independent review official who is vested with administering the appeals process and making a determination based upon information provided by the State and the appellant and on Program regulations. NYSED observes the federal appeal regulations contained in 7 CFR § 225.13 in addition to regulations promulgated by the State agency further outlining the appeals procedures in this case. The IHO's decision is the final agency action which can then be subject to judicial review in a CPLR Article 78 proceeding.

⁵ See, [Our Team | SHMA GIRLS \(shmacamps.org\)](https://www.shmacamps.org)

⁶ See, [Contact Us | SHMA GIRLS \(shmacamps.org\)](https://www.shmacamps.org)

CNP appeals, including SFSP appeals, are informal. Accordingly, the IHO has some discretion over the CNP appeal and hearing process. The standard of review, however, is whether NYSED had sufficient evidence to support its determination and whether NYSED's determination was arbitrary and capricious at the time such determination was made based upon the information and documentation the sponsor provided prior to the Notice of Action, or in this case, NYSED's determination to deny the Appellant's participation in the 2022 SFSP. The appellant has the burden of proof to show that the determination of NYSED was incorrect, arbitrary and capricious or in violation of applicable statutes, regulations and guidance. Additional documentation not previously provided at the time of a CNP review or as part of a final corrective action plan shall not be considered. The sponsor may appeal through a review of documentation by submission to an IHO or the sponsor can request a hearing before an IHO. A sponsor must clearly state which type of appeal it is seeking in the appeal request. Here, the Sponsor chose a hearing which was held on November 22, 2022.

ANALYSIS

On appeal, Appellant quotes a single regulation, 7 CFR § 225.6⁷, which provides in pertinent part that:

(b) Approval of sponsor applications.

(1) Each State agency must inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency must require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline for the Program application submission. Sponsors applying for participation in the Program due to an unanticipated school closure shall be exempt from the application submission deadline.

(2) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.9(c). Where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.9(a).

(3) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.13.

Appellant contends that the Department's denial was arbitrary and capricious or otherwise contrary to the quoted regulation in that NYSED failed to provide appropriate technical assistance,

⁷ Appellant mistakenly provided a citation to 7 CFR § 225.13 (appeal procedures), but this is of no moment.

that a notice of incomplete application was not provided within 15 days, and that the Congregation was led to believe that all information it provided was acceptable and its application was, or would be, approved. (*See*, Appellants pp. 1-2, Hearing Officer Exhibits 1 & 5).

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). A sponsor is defined, in part and as applicable to the instant appeal, in the SFSP's federal regulations as a non-profit organization which provides summer food services similar to that made available to children during the school year under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) (7 CFR § 225.2). As part of its obligation to administer the Child Nutrition Programs (CNP) and ensure Program integrity, it is incumbent upon NYSED to ensure that participating sponsors and sites are eligible and in compliance with all programmatic requirements.

No sponsor shall be eligible to participate in the Program unless it demonstrates financial and administrative capability for the Program operations (7 CFR § 225.14 (c)). Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency and all reimbursements shall be in accordance with the terms of that agreement (7 CFR § 225.9 (d)). According to USDA guidance, closed enrolled for-profit sites and for-profit camps are not eligible to participate.

The record in this case fully supports NYSED's determination to deny the Appellant's participation in the 2022 SFSP upon the determination that Appellant does not have full control, authority, or responsibility over the programs at the two site locations for which it applied to operate the SFSP. By Appellant's own admission, the site locations in which Appellant proposed to operate closed enrolled SFSP sites are owned by an unrelated non-profit entity with a lease to a for profit entity. As such, Appellant failed to meet site eligibility requirements and Appellant's application to operate two closed enrolled SFSP sites were properly denied on this ground alone.⁸

This was not a case where the Respondent denied the application as being *incomplete* (Exhibit J), thereby triggering the requirements to so notify the applicant within 15 days and provide technical assistance for the purpose of completing the application. To be sure, however, the documentary record and testimony adduced at the hearing evidence that NYSED provided appropriate technical assistance all throughout the application process, including clear guidance indicating that the documentation regarding the addresses and not-for-profit status, among other issues, was still being reviewed and required manager and Program director approval. (*See e.g.*, Exhibit F, G & H). I am unable to conclude that there was any failure on NYSED's part in this regard. *See e.g., Bnos Sanz v. King*, Index No. 6675-12 (Sup. Ct. Albany Co., July 29, 2013 (finding allegations of failure to provide technical assistance to be without merit). Nor does the

⁸ In addition, given the serious irregularities and deficiencies observed upon the site visit, which further documentation by the Applicant did not cure (*see* Exhibit J), NYSED properly denied the application on the additional grounds that the Sponsor failed to demonstrate adequate supervisory and direct operational control over the closed enrolled sites. *See, Bais Sarah School for Girls v. NYSED*, 99 A.D.3d 1148 (3d Dept. 2012) (denial of participation was supported by problems identified during review, including inability of appellant to demonstrate trained staff were available to administer program, or maintain an organized system for SFSP records, and to make these records readily available to the Department).

record support the Applicant's suggestions on appeal that it was led to believe the application was approved, through the granting of payee access to the financial system or otherwise. To the contrary, that formal approval had not been issued was made sufficiently clear through correspondence, telephone conversations, and also at the site visit. (*See e.g.*, Exhibit F, G & H).

CONCLUSION

I find that the 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 22, when it denied the Appellant's application to participate in the 2022 Summer Food Service Program. Based on the record presented to me, the New York State Education Department's determination to deny participation by Congregation Anshei Sternberg was reasonable, rational and in accordance with the regulations. The appeal is therefore denied.