



# Minnesota Department of Education: Oversight of Feeding Our Future

**Special Review**

**June 2024**

**Office of the Legislative Auditor**

State of Minnesota

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**State of Minnesota**  
**Office of the Legislative Auditor**

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June 13, 2024

Legislative Audit Commission Members

Willie L. Jett II, Commissioner  
Minnesota Department of Education

The Minnesota Department of Education (MDE) oversees two federally funded nutrition programs that were defrauded during the COVID-19 pandemic. These programs provide reimbursements for meals and snacks served at participating child-care centers, afterschool care programs, summer camps, and adult day care centers, among other locations. However, taxpayer funds intended to support these programs were allegedly used instead for 70 individuals' personal gain. According to the federal government, the scheme centered on a Minnesota nonprofit organization, Feeding Our Future.

Federal regulations required MDE to monitor and enforce Feeding Our Future's compliance with program requirements. MDE's responsibilities under federal law ranged from providing guidance and training to Feeding Our Future staff, to terminating the organization's participation in the programs if warranted. However, we found MDE's oversight of Feeding Our Future to be inadequate. In fact, we believe MDE's actions and inactions created opportunities for fraud. In our report, we describe how MDE:

- Failed to act on warning signs known to the department prior to the onset of the COVID-19 pandemic and prior to the start of the alleged fraud.
- Did not effectively exercise its authority to hold Feeding Our Future accountable to program requirements.
- Was ill-prepared to respond to the issues it encountered with Feeding Our Future.

This special review was conducted by Katherine Theisen, Special Reviews Director; Lucas Lockhart, Lead Special Reviews Auditor, CFE, CAMS; and Libby Wallace, Special Reviews Auditor. MDE cooperated fully with our review, and we thank them for their assistance.

Sincerely,



Judy Randall  
Legislative Auditor



Katherine Theisen  
Special Reviews Director



OLA



## Minnesota Department of Education: Oversight of Feeding Our Future

**MDE's inadequate oversight of Feeding Our Future created opportunities for fraud.**

### Report Summary

#### Application and Administrative Review

Under federal law, MDE is responsible for conducting regular oversight of sponsors participating in CACFP and SFSP. Two key oversight activities include (1) reviewing and approving annual sponsor applications, and (2) conducting monitoring visits and compliance reviews, called “administrative reviews.”

- MDE’s inaction to strengthen and exercise its authority to deny applications put the CACFP and SFSP programs’ integrity at risk. Most notably, MDE failed to address what it sees as limits to its authority years before the start of the COVID-19 pandemic. And, MDE approved Feeding Our Future’s program applications despite unaddressed concerns. (pp. 22, 24, 25)

**Recommendation** ► The Legislature should either establish criteria in statute or give MDE the authority to conduct rulemaking to establish criteria that the department must consider when determining whether to approve organizations for CACFP or SFSP. (p. 33)

- MDE did not always take steps to verify statements made by Feeding Our Future prior to approving its program applications. (pp. 30, 32)

**Recommendation** ► MDE should take additional steps to verify information provided in support of sponsorship applications submitted by high-risk applicants. (p. 34)

- MDE’s only administrative review of Feeding Our Future’s CACFP operations—conducted in 2018—resulted in serious findings that required follow-up, but MDE never conducted a follow-up review. (p. 37)

**Recommendation** ► MDE should conduct follow-up reviews, as needed, to ensure sponsors fully implement corrective action plans that result from administrative reviews. (p. 42)

- COVID-19-pandemic-related waivers that modified monitoring requirements for state agencies and sponsors encouraged offsite reviews and alternative forms of oversight, but MDE’s offsite monitoring of Feeding Our Future was limited. (p. 46)

**Recommendation** ► MDE should place a greater emphasis on program integrity and risk-based monitoring if oversight requirements are waived again in the future. (p. 48)

### Background

Between September 2022 and February 2024, the U.S. Department of Justice charged 70 individuals with various financial crimes related to their suspected roles in a \$250 million fraud scheme. The defendants allegedly exploited two federally funded nutrition programs during the COVID-19 pandemic. According to the federal government, the scheme centered on a Minnesota nonprofit organization, Feeding Our Future.

Until early 2022, Feeding Our Future was a “sponsor” for two federal nutrition programs—the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). The Minnesota Department of Education (MDE) is responsible for administering these programs in Minnesota.

Sponsors—which include school districts, child care programs, and nonprofit organizations, such as Feeding Our Future—manage “sites.” Sites are the places where meals and snacks are served.

## Complaint Investigations

Between June 2018 and December 2021, MDE received at least 30 complaints involving Feeding Our Future or its sites. By law, state agencies must promptly investigate complaints received or irregularities noted in connection with CACFP and SFSP.

- Many of MDE’s complaint investigation procedures and practices were inappropriate or of limited usefulness, particularly in the context of the alleged fraud. While MDE had written complaint investigation procedures, their limited scope and failure to address important issues undermined their ability to promote good investigative practices. And, MDE inappropriately asked Feeding Our Future to investigate complaints about itself. (pp. 49, 51, 55)
- MDE did not investigate some complaints about Feeding Our Future, despite their frequency or seriousness. When MDE decided to investigate complaints about Feeding Our Future, the investigations were inadequate. (pp. 53, 57)

**Recommendations** ► MDE should revise its CACFP and SFSP complaint investigation procedures, prioritize independent fact-finding in response to complaints, and limit the information it shares with the subject of a complaint in an effort to protect complainants from retaliation. (pp. 59-61)

**Recommendation** ► MDE should evaluate the implementation of recent statutory changes related to its investigative authority, and promptly propose needed changes to the Legislature. (p. 61)

## Serious Deficiency Process

If MDE finds a sponsor noncompliant with federal law in its administration of CACFP or SFSP, it must declare the sponsor “seriously deficient.” The resulting process gives sponsors the opportunity to correct the deficiencies. However, if a sponsor is unwilling or incapable of correcting the problems, this process gives MDE the ability to terminate the sponsor’s participation in CACFP and SFSP.

- MDE found Feeding Our Future seriously deficient on two occasions, but ultimately deferred all serious deficiencies without taking reasonable steps to ensure the organization implemented corrective actions. (p. 65)

**Recommendation** ► MDE should conduct more active follow-up to ensure sponsors and sites fully implement corrective action plans that result from serious deficiency processes. (p. 75)

## Summary of Agency Response

In a letter dated June 7, 2024, Willie L. Jett II, Commissioner of Education, said “MDE disputes the OLA’s characterization regarding the adequacy of MDE’s oversight – MDE’s oversight of these programs met applicable standards and MDE made effective referrals to law enforcement.” He said, “What happened with Feeding Our Future was a travesty – a coordinated, brazen abuse of nutrition programs that exist to ensure access to healthy meals for low-income children. The responsibility for this flagrant fraud lies with the indicted and convicted fraudsters.”

Commissioner Jett stated that MDE “is committed to program integrity and strong fiscal oversight of [its] programs and the important work [MDE does] on behalf of children and adults across the state.” The Commissioner further noted that the department has “independently implemented changes to strengthen the Department’s oversight,” including establishing an Office of Inspector General, adding a General Counsel’s Office, providing training to staff on the department’s updated fraud-reporting policy, and contracting with a firm to conduct financial reviews of certain sponsors, among other things.

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# Introduction

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Between September 2022 and February 2024, the U.S. Department of Justice charged 70 individuals with various financial crimes related to their suspected roles in an alleged \$250 million fraud scheme.<sup>1</sup> The defendants allegedly exploited two federally funded nutrition programs during the COVID-19 pandemic. According to the federal government, the scheme centered on a Minnesota nonprofit organization, Feeding Our Future.

Until early 2022, Feeding Our Future was a “sponsor” for two federal nutrition programs—the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). CACFP provides reimbursements for meals and snacks served to eligible children and adults enrolled at participating child-care centers, afterschool care programs, and adult day care centers, among other locations. SFSP typically operates during the summer months when students are not in school, and provides reimbursements for meals and snacks served to eligible children and teens in low-income areas. In these programs, sponsors, which include school districts, child-care programs, and nonprofit organizations, oversee “sites.” Sites are the places where meals and snacks are served.<sup>2</sup> The Minnesota Department of Education (MDE) is responsible for administering CACFP and SFSP in Minnesota.



A **sponsor** is an organization that enters into an agreement directly with the administering state agency to oversee sites' provision of food.

A **site** enters into an agreement with a sponsor and serves food to eligible children and adults, depending on the program.

In response to widespread legislative and public concern about the alleged fraud, we initiated a special review to examine MDE's oversight of Feeding Our Future. The primary questions addressed in our review were:

- **To what extent did MDE meet federal requirements for monitoring Feeding Our Future's participation in CACFP and SFSP?**
- **What, if anything, could MDE have done differently to prevent or stop the alleged fraud?**

To conduct this review, we examined documents related to MDE's oversight of Feeding Our Future, such as records concerning MDE's review of the organization's applications, meal claims, and monitoring activities. We also reviewed documents

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<sup>1</sup> As of May 2024, 18 of the 70 defendants had pleaded guilty. Federal criminal trials for seven of the remaining defendants began in April 2024.

<sup>2</sup> Sponsors can be affiliated with their sites, meaning they oversee sites that are owned or operated by their organization (such as a child-care organization that has multiple locations), or unaffiliated, meaning the sponsor does not own or operate the site. CACFP sites can also be “independent sites”; these sites enter into an agreement directly with the administering state agency.

related to the administrative actions MDE took against Feeding Our Future. The documents we reviewed were provided to us by MDE and Feeding Our Future's executive director.

Further, we evaluated MDE's responses to the complaints it received about Feeding Our Future and its sites. We reviewed MDE's communications with the U.S. Department of Agriculture (USDA) and federal law enforcement agencies. Additionally, we interviewed MDE staff, analyzed data on meal claims and reimbursements, reviewed USDA guidance on CACFP and SFSP, and examined state and federal laws and court records.

This was a limited review, and we did not examine some topics that may be of interest to legislators and the public. For example, we did not evaluate the legal merits of Feeding Our Future's lawsuits against MDE or MDE's legal strategy in that litigation. Because the fraud scheme allegedly began around the start of the COVID-19 pandemic, we assessed the impact of MDE's implementation of federal pandemic-era waivers on its oversight practices. However, we did not evaluate whether these waivers were justified.

Finally, our review focused solely on MDE's oversight of one sponsor—Feeding Our Future—and not on MDE's broader implementation of federal nutrition programs. While this review's focus was driven by the federal criminal charges filed against Feeding Our Future's executive director, staff, and associates, the Office of the Legislative Auditor is not expressing an opinion on the guilt or innocence of the individuals or entities discussed in this report.

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# Conclusion

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The Minnesota Department of Education (MDE) has publicly stated that the department’s “fast action and diligence launched the investigation that stopped the fraud and led to dozens of indictments.”<sup>1</sup> However, given the size of the alleged fraud scheme, it is reasonable to question what else MDE *could* have done, or *should* have done, to prevent or stop the alleged misappropriation of public funds.

When we questioned its oversight of Feeding Our Future, MDE officials explained that five key factors prevented the department from acting on its concerns about Feeding Our Future’s participation in federal nutrition programs:

- **Operational challenges caused by the COVID-19 pandemic-related waivers.** Waivers issued by the U.S. Department of Agriculture (USDA) in response to the COVID-19 pandemic gave sites and sponsors significant flexibility in how to distribute meals and snacks. However, according to an MDE official, these waivers made some prepandemic oversight activities—such as observing meal service—difficult. And, an MDE official told us that things that might once have been clear indicators of fraud or noncompliance, such as perfect attendance at a child-care center with infants and young children, became more ambiguous due to the waivers.
- **Lack of clear, written guidance from USDA.** According to MDE officials, when MDE asked questions of USDA about how the department should interpret certain federal regulations and implement pandemic-era waivers, USDA sometimes responded verbally or did not respond in a timely manner. MDE officials also said the guidance MDE received from USDA at times did not fully address the department’s questions. For example, one MDE official told us that in communications between MDE and USDA about initiating administrative action against Feeding Our Future, USDA pushed responsibility back to MDE, telling the department that it should make decisions consistent with federal regulations.
- **Feeding Our Future’s litigation and public relations campaign regarding MDE’s disapproval of site applications.** Feeding Our Future began threatening to sue MDE in April 2020, and in November 2020, it filed a lawsuit against the department. MDE officials said the department had to be particularly clear and intentional in its oversight of Feeding Our Future in light of its legal risks. Further, when MDE and Feeding Our Future were engaged in the lawsuit, court filings included accusations by Feeding Our Future that MDE was discriminating against it because it served minority communities. Feeding Our Future also alleged, in court filings and in news media, that MDE was preventing tens of thousands of hungry children from accessing food by refusing to approve Feeding

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<sup>1</sup> Minnesota Department of Education, *NEWS RELEASE: MDE Files Legal Claim Against Feeding Our Future to Recover State Funds* (Minneapolis, September 21, 2022), <https://content.govdelivery.com/accounts/MNMDE/bulletins/32e3cf0>, accessed February 15, 2024.

Our Future’s site applications. According to MDE officials, the threat of legal consequences and negative media attention affected MDE’s decisions about the regulatory actions it did and did not take against Feeding Our Future.

- **Lack of rulemaking authority under state law.** According to MDE officials, the department believes it does not have authority in Minnesota law to create rules for federal nutrition programs. As such, MDE has not promulgated administrative rules defining, for example, how it should evaluate organizations’ applications to participate in federal nutrition programs. Without rulemaking authority, the department determined it could not establish additional program requirements that could provide guardrails against waste and abuse.
- **Lack of investigatory authority under state and federal law.** MDE officials told us federal guidance indicated that MDE had to prove a sponsor knowingly submitted false or fraudulent claims in order for it to take administrative action. An MDE official said MDE lacked the investigative authority to meet that standard at the time the alleged fraud was occurring. For example, MDE did not have the authority to subpoena bank records necessary to track the movement of funds across bank accounts.

While we acknowledge these factors created challenges for the department, we also believe MDE could have taken more decisive action sooner in its relationship with Feeding Our Future.

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### **MDE’s inadequate oversight of Feeding Our Future created opportunities for fraud.**

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In our review, we identified numerous instances when MDE did not provide adequate oversight, especially given information it either had in its possession or should have obtained but did not. These instances span all of MDE’s key oversight mechanisms, including its review of Feeding Our Future’s annual sponsor applications, investigations of complaints involving Feeding Our Future, and oversight of an administrative “serious deficiency” process initiated due to deficiencies in Feeding Our Future’s operations. Further, these instances span the nearly four years (2018 to 2022) during which Feeding Our Future received public funds to administer nutrition programs.

MDE officials told us that the department began to have concerns about Feeding Our Future only after the start of the COVID-19 pandemic. However, we think **MDE failed to act on warning signs known to the department prior to the onset of the COVID-19 pandemic and prior to the start of the alleged fraud.** As we describe in Chapter 2, Feeding Our Future was an outlier in terms of its large size in the years preceding the pandemic. At the same time, Feeding Our Future’s annual applications, which we discuss in Chapter 3, reflected an organization that did not appear to have the staffing or procedures needed to manage the millions of dollars that passed through the organization annually. And, as we discuss in Chapter 4, by March 2020, MDE had received a number

of complaints about Feeding Our Future—including an allegation that the organization had solicited a kickback from a vendor in order to participate in the program.

Despite signs that Feeding Our Future might not be in full compliance with program requirements both before and after the start of the COVID-19 pandemic, **MDE did not effectively exercise its authority to hold Feeding Our Future accountable to program requirements.** For example, in this report, we describe how MDE:

- Repeatedly approved Feeding Our Future’s annual applications despite identifying serious concerns about the organization’s ability to administer federal nutrition programs. (pp. 25, 31)
- Did not follow up on serious findings from its only in-depth monitoring review of the organization that began in late 2018. (p. 37)
- Did not appropriately investigate complaints involving Feeding Our Future. (pp. 53, 55)
- Did not verify information provided by Feeding Our Future prior to approving its annual applications, closing investigations, or deferring administrative actions taken in response to deficiencies MDE identified in Feeding Our Future’s operations. (pp. 30, 32, 57, 65)

No additional authority would have been needed to take these steps. MDE had the authority—and the obligation—to take each of these steps, regardless of any lack of detail in law or USDA guidance, and regardless of a threat of litigation or negative press.<sup>2</sup> To the extent that MDE believed that additional regulatory authority would have strengthened its ability to take these actions, MDE had an obligation to seek legislative action to obtain that authority.

**More broadly, the failures we highlight in this report are symptoms of a department that was ill-prepared to respond to the issues it encountered with Feeding Our Future.** MDE did not have a general counsel until January 2022 to advise the department on how to interpret and implement complex federal regulations and identify policy changes to bolster the department’s regulatory authority. As we discuss further in Chapter 3, even after the Minnesota Court of Appeals put MDE on notice in 2017 that it needed to codify certain procedures in state administrative rules, MDE neither requested changes to statutes nor pursued rulemaking authority. As we explain in Chapter 4, MDE relied on child-nutrition program staff—not trained investigators—to investigate allegations of fraud, waste, and abuse. And, according to one MDE official, the department lacked the staff it needed to respond to the COVID-19 pandemic.

Chapter 1 of this report provides background information on federal nutrition programs and the oversight requirements for state agencies and sponsors. Chapter 2 focuses on Feeding Our Future and the alleged fraud scheme. In Chapter 3, we outline concerns

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<sup>2</sup> For example, federal regulations require that MDE only approve the applications of sponsors that meet certain performance standards, target sponsors with a history of operational deficiencies for more frequent in-depth monitoring reviews, and promptly investigate complaints or irregularities (7 *CFR*, secs. 225.6(d); 225.7(e)(4)(iii); 225.11(b); and 226.6(b)(1)(xviii), (b)(2)(vii), (m)(2), and (n) (2023)).

we have about MDE's review of Feeding Our Future's sponsor applications, administrative review of the organization, and implementation of federal waivers issued in response to the COVID-19 pandemic. We criticize MDE's handling of complaints it received involving Feeding Our Future in Chapter 4, and in Chapter 5, we explain how MDE's oversight was undermined by decisions it made when the organization was subject to a serious deficiency process. Finally, Appendix A provides a detailed history and timeline of MDE and Feeding Our Future's relationship, and Appendix B provides a summary of litigation between MDE and Feeding Our Future.

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# Chapter 1: Federal Nutrition Programs

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From 2020 to 2022, approximately 7 percent of Minnesota households were, at times, uncertain of having or unable to acquire enough food to meet their needs due to a lack of money or other resources.<sup>1</sup> Through the U.S. Department of Agriculture (USDA), the federal government provides funding to states for several programs to address childhood hunger and promote the health and well-being of children and dependent adults. For example, one program reimburses schools and other designated institutions for providing free or low-cost lunches to children each day, and another program helps schools and early care sites to incorporate local foods in the meals and snacks they serve. The Minnesota Department of Education (MDE) administers these programs in Minnesota.

Two federal nutrition programs—the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP)—were allegedly defrauded during the COVID-19 pandemic by a Minnesota nonprofit organization and its associates.

- **CACFP** provides reimbursements for meals and snacks provided to eligible children and adults who are enrolled for care at participating child-care centers, day care homes, and adult day care centers. CACFP also provides reimbursements for meals and snacks served to children and youth participating in afterschool care programs and children residing in emergency shelters.
- **SFSP** reimburses providers who serve free healthy meals and snacks to children and teens in low-income areas when school is not in session. The program operates primarily during the summer months, but it may also be used during unanticipated school closures due to natural disasters, labor-management disputes, or other events.

## Overview of CACFP and SFSP

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In CACFP and SFSP, food is served to eligible children and adults at locations called “**sites**,” such as schools, child-care centers, and adult day care centers. Sites are responsible for verifying eligibility of participants, taking attendance, serving meals and snacks, and counting the number of meals and snacks served. CACFP and SFSP sites may prepare food themselves or contract with outside vendors to provide meals and snacks.

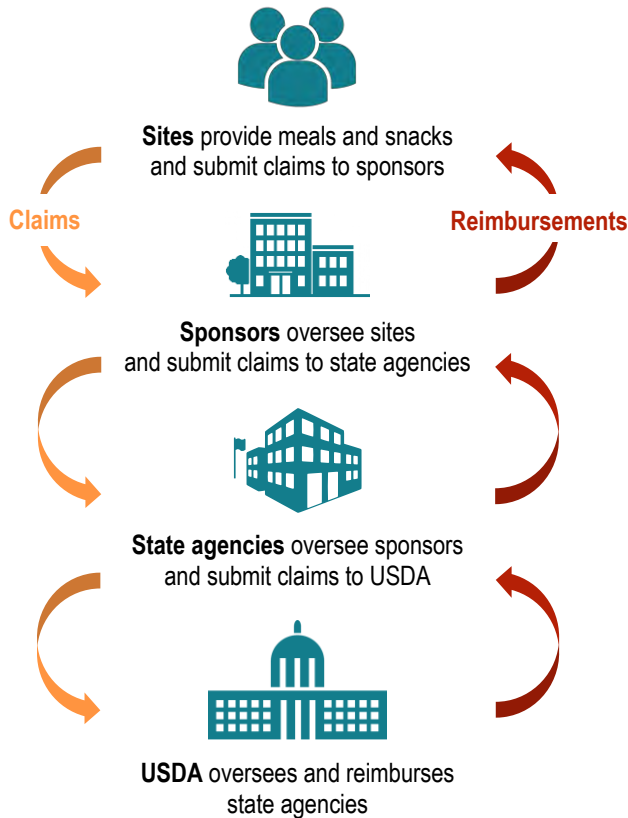
As Exhibit 1.1 depicts, sites submit claims for reimbursement to “**sponsors**” that reflect the number of meals and snacks served on a given day. Sponsors, which include school districts, child-care programs, and nonprofit organizations, are responsible for

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<sup>1</sup> U.S. Department of Agriculture, Economic Research Service, *Food Security in the U.S., Interactive Charts and Highlights* (Washington, DC), <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/interactive-charts-and-highlights/#childtrends>, accessed January 9, 2024.

Exhibit 1.1

### Sites, sponsors, state agencies, and USDA have roles in administering CACFP and SFSP.



Source: Office of the Legislative Auditor.

overseeing their sites, including monitoring their sites for compliance with program requirements.

Sponsors contract with **state agencies** to administer CACFP and SFSP, and state agencies are responsible for overseeing sponsors' compliance with applicable federal and state laws. Sponsors submit claims for reimbursement on behalf of their sites to state agencies on a monthly basis, and in turn, state agencies submit those claims to **USDA**.

USDA then reimburses state agencies, and state agencies reimburse sponsors. Sponsors, in turn, reimburse the sites under their sponsorship. Sponsors retain a percentage of reimbursements to cover the costs of providing or facilitating food service and ensuring compliance with federal program rules, among other responsibilities.

Typically, a child or adult's eligibility for food funded through CACFP is determined by their household income. For example, participating child-care centers are reimbursed based on enrolled children's eligibility for free or reduced-price meals, meaning their household income is at or below 185 percent of the federal poverty level. Generally, sites are eligible for reimbursement through SFSP if at least 50 percent of households in the school district or census tract in which they are located are eligible for free or reduced-price school meals.

## Program Participation

In recent years, hundreds of Minnesota school districts, child-care programs, and nonprofit organizations have participated in CACFP and SFSP. During the 2018 through 2022 CACFP program years, a total of 442 sponsors participated in CACFP.<sup>2</sup> During the 2018 through 2022 SFSP program years, 714 sponsors participated in SFSP.<sup>3</sup> In fiscal years 2018 to 2022, MDE distributed a total of \$845.1 million in federal funds through CACFP and SFSP.<sup>4</sup>

<sup>2</sup> CACFP program years begin on October 1 and end on September 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2018 began on October 1, 2017, and ended on September 30, 2018.

<sup>3</sup> SFSP program years begin on May 1 and end on April 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2018 began on May 1, 2017, and ended on April 30, 2018.

<sup>4</sup> The state's fiscal year begins on July 1 and ends on June 30 of the following year and is designated by the calendar year in which it ends; thus, Fiscal Year 2021 began on July 1, 2020, and ended on June 30, 2021. For simplicity, we use "fiscal year" to refer to the state's fiscal year.



Most sponsors operate one site. In the 2022 CACFP and SFSP program years, 72 percent of CACFP sponsors and 53 percent of SFSP sponsors operated only one site. Only a small percentage of all sponsors operated 20 or more sites; 3 percent of CACFP and SFSP sponsors operated 20 or more sites in the 2022 CACFP and SFSP program years.

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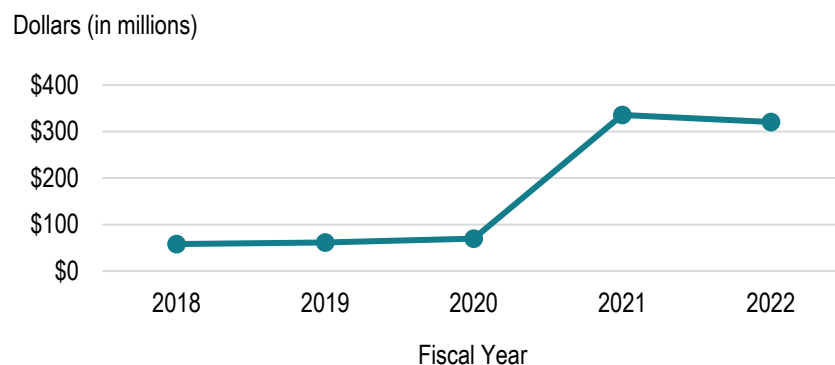
### **Reimbursements for and participation in CACFP and SFSP increased substantially in response to the COVID-19 pandemic.**

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The amount of money MDE distributed through CACFP and SFSP increased substantially between fiscal years 2020 and 2021.<sup>5</sup> In Fiscal Year 2020, MDE reimbursed CACFP and SFSP participants nearly \$70 million. In Fiscal Year 2021, however, MDE distributed almost \$336 million, a 382 percent increase from the prior year.

#### **Exhibit 1.2**

### **MDE distributed 382 percent more funds through CACFP and SFSP in Fiscal Year 2021 than in the year prior.**



Source: Office of the Legislative Auditor, analysis of expenditure data from StateWide Integrated Financial Tools (SWIFT).

The number of CACFP and SFSP sites approved by MDE also increased dramatically after the start of the pandemic in 2020. For example, site participation in SFSP increased 73 percent between the 2019 and 2020 SFSP program years, from 993 sites to 1,713 sites. SFSP sponsor participation also increased following the onset of the pandemic; 141 percent more sponsors participated in SFSP in program year 2020 (523) than in program year 2019 (217).

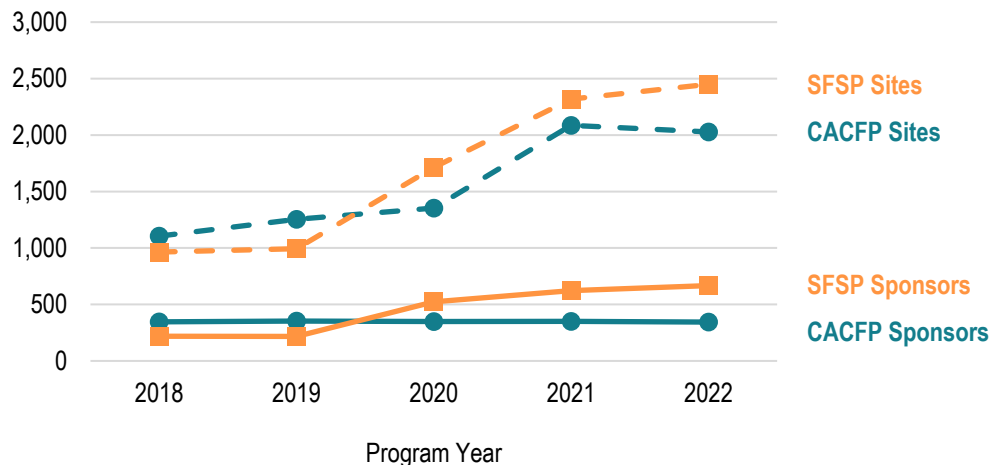
In the years prior to the pandemic, SFSP sites typically opened for food service beginning in May and operated throughout the summer. However, when schools across the nation closed in response to the COVID-19 pandemic in the spring of 2020, USDA used SFSP to provide meals and snacks to children who were previously served through school-based nutrition programs. During the 2020 SFSP program year, which ended on April 30, 2020, MDE approved over 1,100 sites in March and April 2020 alone.

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<sup>5</sup> The World Health Organization declared COVID-19 a pandemic in March 2020.

Exhibit 1.3

**More sites and sponsors began participating in CACFP and SFSP around the start of the COVID-19 pandemic.**



Source: Office of the Legislative Auditor, analysis of Minnesota Department of Education data.

## Oversight

**The integrity of CACFP and SFSP relies on state agencies and sponsors fulfilling their oversight responsibilities.**

Federal regulations that govern both CACFP and SFSP require state agencies to administer and monitor the programs, including conducting oversight of sponsors.<sup>6</sup> In Minnesota, MDE is responsible for:

- Approving applications for all sponsors and sites participating in the programs.
- Entering into program agreements that govern the rights and responsibilities of MDE and sponsors.
- Monitoring program participants to ensure compliance with recordkeeping requirements, nutritional and food service requirements, and other program requirements.
- Reviewing and approving claims for reimbursement and making payments to sponsors for valid claims.
- Providing training and technical assistance to program participants to help them comply with federal regulations and guidance.

<sup>6</sup> 7 CFR, secs. 225.6(a)(1) and 226.6(a) (2023).

In fiscal years 2020 through 2022, MDE dedicated roughly 15 full-time-equivalents to overseeing CACFP and SFSP. MDE pays for its oversight activities through an indirect rate charged to several federal funding sources.

Sponsors also have important oversight responsibilities under federal regulations.<sup>7</sup> Sponsors are responsible for enrolling sites into the program, training site staff, receiving the sites' reimbursement claims, and distributing reimbursements for valid claims. Through regular site visits and off-site "desk" reviews, sponsors are responsible for monitoring sites' compliance with program requirements. Further, sponsors are required to maintain records documenting the meals and snacks served at their sites.

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**If sponsors do not comply with federal program requirements, MDE may issue a notice of "serious deficiency" and require sponsors to take corrective actions.**

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Federal regulations require CACFP and SFSP sponsors to demonstrate financial viability, administrative capability, and program accountability; maintain detailed records; and have adequate personnel to monitor sites for compliance, among other



**Examples of Serious Deficiencies**

- Misrepresentation of information submitted on applications.
- Submission of false claims for reimbursement.
- Noncompliance with requirements related to the nutritional content of meals and snacks.
- Failure to keep required records.

obligations.<sup>8</sup> If MDE finds serious violations of federal requirements during a sponsor's participation in CACFP or SFSP, the department must notify the sponsor that it is "seriously deficient."<sup>9</sup> Sponsors must take corrective action to address noncompliance.<sup>10</sup> If the sponsor does not adequately address MDE's concerns, MDE must move to terminate the sponsor from program participation.<sup>11</sup> Sponsors can appeal MDE's decision to deny an application or terminate their participation in CACFP or SFSP, but they cannot appeal MDE's serious deficiency determinations.<sup>12</sup>

Other violations prompt a more immediate response from MDE.

If MDE were to find a violation that threatens the health or safety of program participants, it must immediately take steps to terminate either the sponsor or the site, depending on the program.<sup>13</sup> Finally, if MDE finds that a sponsor submitted an invalid claim, it may not reimburse the sponsor for the portion of the claim that MDE knows to be invalid.<sup>14</sup>

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<sup>7</sup> 7 *CFR*, secs. 225.14-15 and 226.15-16 (2023).

<sup>8</sup> 7 *CFR*, secs. 225.6(d); 225.15(c)(1); 226.6(b)(1)(xviii)(A)-(C) and (b)(2)(vii)(A)-(C); 226.15(e); and 226.16(b)(1) (2023).

<sup>9</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(iii)(A), (c)(2)(iii)(A), and (c)(3)(iii)(A) (2023).

<sup>10</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(iii)(B), (c)(2)(iii)(B), and (c)(3)(iii)(B) (2023).

<sup>11</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(iii)(C), (c)(2)(iii)(C), and (c)(3)(iii)(C) (2023).

<sup>12</sup> 7 *CFR*, secs. 225.13(a); and 226.6(k)(2)(i), (k)(2)(iii), and (k)(3)(ii) (2023).

<sup>13</sup> 7 *CFR*, secs. 225.11(f)(3) and 226.6(c)(5)(i) (2023).

<sup>14</sup> 7 *CFR*, secs. 225.9(d)(4) and 226.7(k) (2023). If MDE determines that a sponsor in CACFP has "knowingly submitted a false or fraudulent claim," it may suspend the sponsor's participation in the program and must initiate action to terminate the sponsor (7 *CFR*, sec. 226.6(c)(5)(ii) (2023)).



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# Chapter 2: Feeding Our Future

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Feeding Our Future, a nonprofit organization, was established in November 2016.<sup>1</sup> Feeding Our Future's mission was to help youth and seniors access healthy foods by sponsoring community organizations' participation in federal nutrition programs. At its height, the organization employed dozens of individuals to manage its programs and prepare and serve food at its sites.

On January 20, 2022, federal authorities executed search warrants at Feeding Our Future's office and several other locations affiliated with the nonprofit organization, including the home of its executive director. On the same day, the Minnesota Department of Education (MDE) terminated Feeding Our Future's participation in two federal nutrition programs. Between September 2022 and February 2024, the U.S. Department of Justice charged 70 individuals associated with Feeding Our Future with various crimes, including bribery, money laundering, and wire fraud. According to the U.S. Department of Justice,

The defendants obtained, misappropriated, and laundered millions of dollars in program funds that were intended as reimbursements for the cost of serving meals to children. The defendants exploited changes in the program intended to ensure underserved children received adequate nutrition during the COVID-19 pandemic. Rather than feed children, the defendants enriched themselves by fraudulently misappropriating millions of dollars in Federal Child Nutrition Program funds.<sup>2</sup>

In this chapter, we describe Feeding Our Future's participation in federal nutrition programs and summarize the criminal charges filed against Feeding Our Future's executive director, staff, and associates.

## Participation in Federal Nutrition Programs

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Feeding Our Future first secured MDE's approval to be a sponsor in the Child and Adult Care Food Program (CACFP) in 2017. Despite being an approved sponsor, Feeding Our Future remained inactive until mid-2018. The organization received its first reimbursements for meals and snacks served through CACFP in August 2018. Later, in 2020, MDE approved Feeding Our Future as a sponsor in the Summer Food Service Program (SFSP). Feeding Our Future received its first reimbursements for meals and snacks served through SFSP in June 2020.

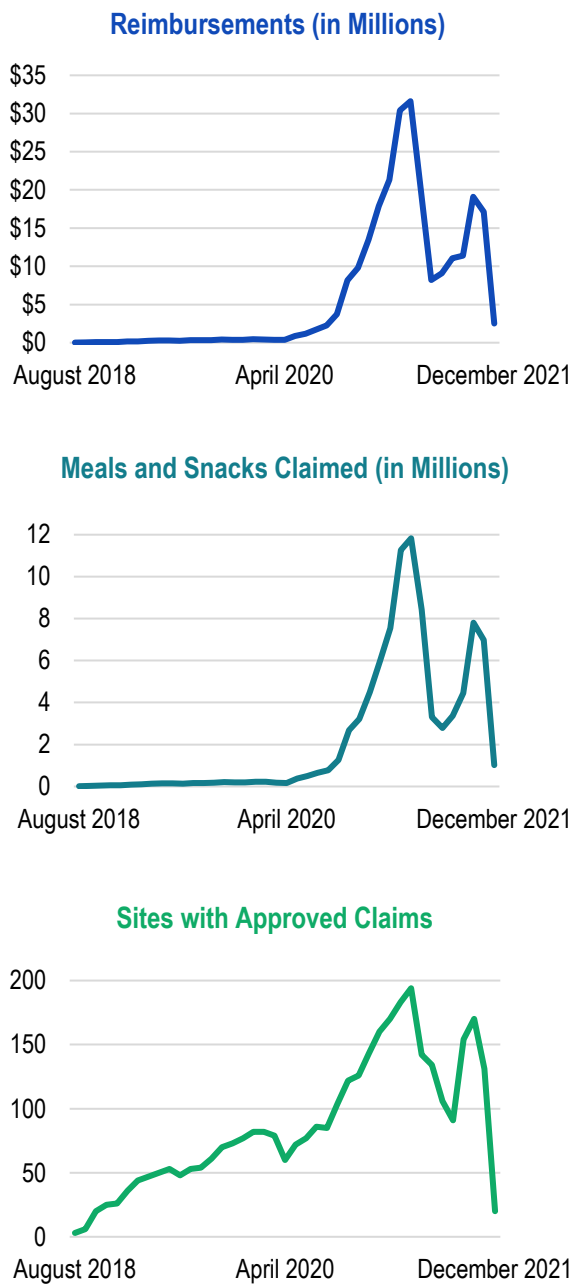
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<sup>1</sup> According to one of Feeding Our Future's founding members, Feeding Our Future was created to be a backup organization in case an existing CACFP sponsor, Partners in Nutrition, was unable to continue operating. As we discuss in Chapter 3, in 2016, MDE denied Partners in Nutrition's request to expand from a sponsor of a single site to being a sponsor of multiple sites in CACFP. Partners in Nutrition appealed MDE's determination to the Minnesota Court of Appeals, and in the summer of 2017, the court ruled in Partners in Nutrition's favor. In 2017, MDE also approved Feeding Our Future's application to be a CACFP sponsor.

<sup>2</sup> U.S. Department of Justice, Office of Public Affairs, *PRESS RELEASE: U.S. Attorney Announces Federal Charges Against 47 Defendants in \$250 Million Feeding Our Future Fraud Scheme* (Washington, DC, September 20, 2022), <https://www.justice.gov/opa/pr/us-attorney-announces-federal-charges-against-47-defendants-250-million-feeding-our-future>, accessed January 17, 2024.

Exhibit 2.1

For CACFP and SFSP combined, the **reimbursements** Feeding Our Future received, the number of **meals and snacks** it claimed, and **sites** under its sponsorship per month ballooned in 2020.



**Between 2018 and 2021, Feeding Our Future’s operation grew at a significant rate.**

Over its first year in operation, Feeding Our Future grew at a relatively steady rate when compared to its growth after the start of the COVID-19 pandemic.<sup>3</sup> Feeding Our Future went from receiving roughly \$307,000 in total **reimbursements** in the last five months of 2018 (approximately \$61,500 per month on average) to roughly \$1.8 million in total reimbursements in the last five months of 2019 (approximately \$361,000 per month on average), an increase of 487 percent.

As Exhibit 2.1 shows, for CACFP and SFSP combined, the **number of meals and snacks** Feeding Our Future claimed to have served—and the reimbursements it received from MDE—increased dramatically in the year following the beginning of the COVID-19 pandemic. At its peak, Feeding Our Future claimed to have served 11.8 million meals and snacks in April 2021, a 7,104 percent increase from the same month a year prior. MDE paid Feeding Our Future nearly \$32 million for the meals and snacks the organization served in April 2021—87 times more than what MDE paid Feeding Our Future in April 2020. The **number of sites** that received payment under Feeding Our Future’s sponsorship also increased during the same time, reaching a high of 194 sites in April 2021.

As we discuss in Chapter 5, in March 2021, MDE temporarily stopped accepting and paying Feeding Our Future’s meal claims. Further, as we explain in Appendix B, from late 2020 to mid-2021, MDE delayed its approval of over 100 of Feeding Our Future’s sites. This caused a sudden drop (seen in Exhibit 2.1) in the reimbursements Feeding Our Future received, the number of meals and snacks it claimed, and sites under its sponsorship.

Source: Office of the Legislative Auditor, analysis of Minnesota Department of Education data.

<sup>3</sup> The World Health Organization declared COVID-19 a pandemic in March 2020.

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**Compared to other sponsors, Feeding Our Future was an outlier in the amount of reimbursements it received and the number of sites under its sponsorship.**

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Due to the COVID-19 pandemic, the amount of federal funds MDE distributed to all CACFP and SFSP sponsors combined nearly quintupled in Fiscal Year 2021 when compared to the previous year.<sup>4</sup> However, as Exhibit 2.2 shows, the total funds received by Feeding Our Future increased by roughly 2,800 percent over the same period. In Fiscal Year 2021, roughly four out of every ten dollars distributed to CACFP and SFSP sponsors and independent sites went to Feeding Our Future.

**Exhibit 2.2**

**Between Fiscal Year 2020 and Fiscal Year 2021, MDE's payments to Feeding Our Future increased by about 2,800 percent.**

Fiscal Year	Payments to All CACFP and SFSP Sponsors		Payments to Feeding Our Future	
	Dollars (in Millions)	Percentage Change from Previous Fiscal Year	Dollars (in Millions)	Percentage Change from Previous Fiscal Year
2018	\$ 58.1	–	–	–
2019	61.3	6%	\$ 1.4	–
2020	69.6	14	4.8	252%
2021	335.7	382	140.3	2,818
2022	320.4	-5	98.4	-30

Source: Office of the Legislative Auditor, analysis of expenditure data from StateWide Integrated Financial Tools (SWIFT).

Growth in the number of Feeding Our Future's CACFP sites was significantly larger than other CACFP sponsors with multiple sites. While the total number of CACFP sites across Minnesota grew by 54 percent in the 2021 CACFP program year, the number of Feeding Our Future CACFP sites more than tripled during the same period.<sup>5</sup> Even before the COVID-19 pandemic, Feeding Our Future was an outlier in terms of the number of CACFP sites it sponsored. By the end of the 2019 program year, Feeding Our Future already had more than six times the number of CACFP sites than the average multisite sponsor.<sup>6</sup>

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<sup>4</sup> The state's fiscal year begins on July 1 and ends on June 30 of the following year and is designated by the calendar year in which it ends; thus, Fiscal Year 2021 began on July 1, 2020, and ended on June 30, 2021. For simplicity, we use "fiscal year" to refer to the state's fiscal year.

<sup>5</sup> CACFP program years begin on October 1 and end on September 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2021 began on October 1, 2020, and ended on September 30, 2021.

<sup>6</sup> In the 2019 CACFP program year, 25 percent of approved sponsors operated more than one CACFP site. Between the 2018 and 2022 program years, the percentage of sponsors approved to operate more than one CACFP site ranged from 24 to 30 percent, peaking at 30 percent in the 2021 CACFP program year.

## Exhibit 2.3

**Between program year 2020 and program year 2021, Feeding Our Future more than tripled the number of CACFP sites under its sponsorship.**

Program Year	Multisite CACFP Sponsors		Feeding Our Future	
	Average Number of Sites Per Sponsor	Percentage Change from Previous Program Year	Number of Sites	Percentage Change from Previous Program Year
2018	10	–	8	–
2019	12	12%	73	813%
2020	12	3	116	59
2021	18	50	384	231
2022	19	4	312	-19

Notes: The number of sites listed above represents sites approved by MDE to operate in a given CACFP program year. Some sites approved by MDE did not receive reimbursements during the program year in which they were approved to operate. For example, during the 2019 CACFP program year, MDE approved 73 Feeding Our Future sites, but only 68 of those sites received reimbursement for claimed CACFP meals and snacks during the program year. Exhibit 2.1 presents the number of Feeding Our Future sites that received reimbursements for CACFP or SFSP meals and snacks served in a given month.

Source: Office of the Legislative Auditor, analysis of Minnesota Department of Education data.

The number of SFSP sites also grew significantly after the onset of the COVID-19 pandemic, but Feeding Our Future's growth was especially dramatic. Feeding Our Future did not participate in SFSP prior to the pandemic, but received approval to open 81 sites during the 2021 SFSP program year (May 1, 2020, to April 30, 2021). The number of sites Feeding Our Future sponsored in 2021 was roughly 12 times the average number of sites sponsored by other multisite SFSP sponsors during the same program year.

## Criminal Indictments

**Between September 2022 and February 2024, the federal government indicted 70 individuals associated with Feeding Our Future, alleging they used federal food aid for personal gain.**

In September 2022, the U.S. Department of Justice announced federal criminal charges against 47 individuals for allegedly defrauding the government of \$250 million from federal nutrition programs. In October 2022, March 2023, and February 2024, the U.S. Department of Justice announced additional indictments, naming a total of 23 more defendants. The following box provides a description of some of the criminal charges used in this case.



The defendants include Feeding Our Future's executive director, other Feeding Our Future employees, and individuals who operated various sites affiliated with Feeding Our Future and/or another federal nutrition program sponsor.

According to the federal indictments, Feeding Our Future employees allegedly recruited individuals and entities to open illegitimate CACFP or SFSP sites throughout Minnesota, knowingly submitted fraudulent claims for reimbursement, and solicited and received bribes and kickbacks from the sites it sponsored, among other things. Further, the government alleged that Feeding Our Future's executive director gave false assurances to MDE that the nonprofit organization was monitoring the sites it sponsored and that the sites served the meals and snacks they claimed to be serving.

The defendants who operated the sites named in the charging documents allegedly claimed meals and snacks that were never served, falsified attendance records, and created fake invoices intended to document the purchase of food purportedly served to children at their sites. The government alleged some of the defendants created dozens of shell companies to receive, misappropriate, and launder the proceeds of their fraud scheme. After allegedly laundering the proceeds of their scheme, the defendants allegedly used their shell companies to pay off debts; travel; and purchase commercial and residential real estate (in Minnesota, other states, and other countries), businesses, luxury cars, boats, and other personal items such as electronics, clothing, and jewelry.

As of May 2024, 18 of the 70 defendants had pleaded guilty. Federal criminal trials for seven of the remaining defendants began in April 2024.



### Criminal Charges Related to the Alleged Scheme

- **Wire fraud:** Interstate electronic communications are used in furtherance of a criminal act.
- **Conspiracy to commit wire fraud:** An agreement between two or more people to intentionally commit wire fraud.
- **Federal programs bribery:** Soliciting, accepting, or transferring anything of value in exchange for an action of an agent of an entity that receives \$10,000 or more annually in federal assistance.
- **Conspiracy to commit federal programs bribery:** An agreement between two or more people to intentionally commit federal programs bribery.
- **Money laundering:** A financial transaction scheme that aims to conceal the identity, source, and destination of illicitly obtained money.
- **Conspiracy to commit money laundering:** An agreement between two or more people to intentionally commit money laundering.
- **Theft of government funds:** Willfully and knowingly stealing funds from a government program.



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# Chapter 3: Application and Administrative Reviews

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Under federal law, the Minnesota Department of Education (MDE) is responsible for overseeing sponsors participating in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).<sup>1</sup> Some of these oversight responsibilities, including reviewing and approving applications and conducting monitoring visits and compliance reviews, must occur on a regular schedule outlined in federal regulations.<sup>2</sup>

In Minnesota, sponsors must apply annually to participate in CACFP and SFSP.<sup>3</sup> Federal regulations require MDE to review sponsors' (1) applications to ensure that they can comply with financial and operational standards, and (2) administrative budgets to ensure that applicants will have the financial means to comply with program regulations.<sup>4</sup>

Federal regulations require MDE to conduct periodic compliance monitoring, known as administrative reviews, of a specified percentage of all CACFP sponsors and a specified number of SFSP sponsors each year.<sup>5</sup> Administrative reviews include visits to a specified percentage of a sponsor's sites; observations of meal and snack services; and reviews of the sponsor's records, including meal claims, financial records, and documentation of the sponsor's monitoring efforts.

In this chapter, we discuss MDE's review of Feeding Our Future's annual sponsor applications, its administrative reviews of Feeding Our Future's operations, and the impact of COVID-19 pandemic-era waivers on these processes.



## Key Events in the Timeline: Application and Administrative Reviews

**November 2016** – Feeding Our Future was established.

**June 2017** – Feeding Our Future received MDE approval to become a CACFP sponsor.

**February 2019** – MDE completed its only administrative review of Feeding Our Future.

**June 2020** – Feeding Our Future received MDE approval to become an SFSP sponsor.

**January 2022** – MDE terminated Feeding Our Future's sponsorship in CACFP and SFSP.

*See Appendix A for additional information.*

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<sup>1</sup> 7 *CFR*, secs. 225.6(a)(1) and 226.6(a) (2023).

<sup>2</sup> 7 *CFR*, secs. 225.6(b)(1) and (b)(3); 225.7(d)(1) and (e)(4); and 226.6(b), (f), and (m)(6) (2023).

<sup>3</sup> Federal regulations require CACFP sponsors to reapply at least once every three years, but MDE requires sponsors to reapply for CACFP participation annually (7 *CFR*, sec. 226.6(f)(2)(i) (2023)). In contrast, federal regulations establish an explicit deadline for annual SFSP applications (7 *CFR*, sec. 225.6(b)(1) (2023)). CACFP program years begin on October 1 and end on September 30 of the following year. SFSP program years begin on May 1 and end on April 30 of the following year. For both CACFP and SFSP, the program year is designated by the year in which it ends; thus, CACFP program year 2018 began on October 1, 2017, and ended on September 30, 2018.

<sup>4</sup> 7 *CFR*, secs. 225.6(b)-(e); 226.6(b); 226.6(f)(1)(iv); and 226.7(g) (2023).

<sup>5</sup> 7 *CFR*, secs. 225.7(e)(4)(ii) and 226.6(m)(6) (2023).

## Annual Application Reviews

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MDE’s review of new and renewing sponsors’ annual applications is one of the key ways in which the department exercises oversight of CACFP and SFSP sponsors. During these reviews, MDE has the opportunity to evaluate sponsor applicants’ detailed plans for managing their food programs, including information on the organizations’ budgets and staffing.

If MDE determines that a sponsor’s application is incomplete, the department provides technical assistance to help it complete its application. If, despite this technical assistance, MDE believes the sponsor cannot meet standards found in law, MDE must deny the application.<sup>6</sup> Further, if MDE identifies in the application certain serious concerns outlined in federal regulations, MDE has the authority to initiate an administrative “serious deficiency” process, which could result in the sponsor’s termination from CACFP or SFSP.<sup>7</sup>

In this section, we first describe the information sponsors are required to submit to MDE during the annual application process. Then, we discuss concerns we have about MDE’s review and approval of Feeding Our Future’s annual applications.

### Application Requirements

To participate in CACFP and SFSP, each new or renewing sponsor must submit an application to MDE. Among other things, the application must demonstrate how the sponsor meets certain performance standards, including that it is financially viable and administratively capable of operating CACFP or SFSP in compliance with federal regulations.<sup>8</sup> Sponsors must also provide policies and procedures (called a “program management plan”) documenting how they will manage their operations and monitor their sites, while complying with legal requirements and operating within their budgets.<sup>9</sup> The boxes on the following page provide a summary of the performance standards for CACFP and SFSP found in federal regulations.<sup>10</sup>

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<sup>6</sup> 7 *CFR*, secs. 225.6(d); and 226.6(b)(1)(xviii), (b)(2)(vii), (c)(1)(i), and (c)(2)(i) (2023).

<sup>7</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(i) and (c)(2)(i) (2023). As we explained in Chapter 1, if MDE finds serious violations of federal requirements during a sponsor’s participation in CACFP or SFSP, the department notifies the sponsor that it is “seriously deficient.” If the sponsor does not adequately correct its serious deficiencies, MDE must move to terminate the sponsor from program participation. Sponsors can appeal MDE’s decisions to deny an application or terminate a sponsor from program participation, but they cannot appeal MDE’s serious deficiency determinations.

<sup>8</sup> 7 *CFR*, secs. 225.6(d); and 226.6(b)(1)(xviii) and (b)(2)(vii) (2023).

<sup>9</sup> 7 *CFR*, secs. 225.6(e); and 226.6(b)(1)(iv), (b)(1)(xviii)(C)(4), (b)(2)(i), and (b)(2)(vii)(C)(4) (2023).

<sup>10</sup> 7 *CFR*, secs. 225.6(d)(1)-(3); and 226.6(b)(1)(xviii)(A)-(C) and (b)(2)(vii)(A)-(C) (2023). In the years Feeding Our Future participated in SFSP, federal regulations did not require the organization to submit an SFSP management plan or comply with the SFSP-specific performance standards shown in the boxes on page 21. The regulations were amended in October 2022 to add these requirements, more than eight months after MDE terminated Feeding Our Future’s participation in SFSP.

CACFP and SFSP Performance Standard 1: Financial Viability and Management	CACFP and SFSP Performance Standard 2: Administrative Capability	CACFP and SFSP Performance Standard 3: Program Accountability
<p>Sponsors must be financially viable and must:</p> <ul style="list-style-type: none"> <li>• Have adequate resources to operate on a daily basis (CACFP only).</li> <li>• Have appropriate site recruitment practices.</li> <li>• Have adequate resources to pay debts, employees, and suppliers during temporary interruptions in program payments.</li> <li>• Document their financial viability, such as through financial statements and audits.</li> <li>• Have budgets that contain necessary, reasonable, allowable, and documented costs.</li> </ul>	<p>Sponsors must be capable of administering CACFP or SFSP and must have:</p> <ul style="list-style-type: none"> <li>• Appropriate and effective management practices to ensure compliance with federal law.</li> <li>• Adequate numbers and types of staff, including monitoring staff.</li> <li>• Written policies and procedures that (1) assign program responsibilities and duties and (2) ensure compliance with civil rights regulations.</li> </ul>	<p>Sponsors must have internal controls and other management systems in place to guarantee fiscal accountability and other program operational requirements. For example, they must have:</p> <ul style="list-style-type: none"> <li>• An independent governing board (CACFP only).</li> <li>• Written management controls to ensure fiscal integrity and accountability.</li> <li>• A system of safeguards and controls to prevent and detect improper financial activities by employees.</li> <li>• Recordkeeping systems to account for and retain program records.</li> </ul>

Along with the application, both CACFP and SFSP sponsors must provide an administrative and operating budget that includes projected administrative expenses and reimbursements. Among other things, sponsors provide salary and benefit information, expenses associated with training staff, and food costs.

Further, new and renewing SFSP sponsor applicants must demonstrate that they and their sites meet eligibility criteria found in law.<sup>11</sup> Sponsor applicants must also provide information about each of their proposed sites, such as the types of meals and snacks the sites will serve and for new sites, how the sites plan to store food.<sup>12</sup>

Federal regulations direct MDE to use information submitted in sponsors' applications to determine the eligibility of new and renewing CACFP and SFSP sponsors, the reasonableness of sponsors' budgets, and the capability of sponsors to manage program funds in accordance with federal requirements.<sup>13</sup> MDE must use its discretion to determine whether the sponsors' applications demonstrate that they can meet CACFP

<sup>11</sup> 7 *CFR*, secs. 225.6(g) and 225.14 (2023). Typically, to be eligible for SFSP participation, sites must be either (1) located in an area in which at least 50 percent of the children are from households with incomes that make them eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program; or (2) at least 50 percent of the children enrolled at the site are from households with incomes that make them eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program.

<sup>12</sup> 7 *CFR*, secs. 225.6(c)(2)(iii), (c)(3)(ii), and (g) (2023).

<sup>13</sup> 7 *CFR*, secs. 225.6(b)(4), (b)(7), (c)(2)(iv), (c)(2)(vii), (c)(3)(v), and (d); 225.14(c) and (d); 226.6(b), (b)(1)(xviii), (b)(2)(vii), and (f)(1)(iv); and 226.16(b) (2023).

and SFSP performance standards.<sup>14</sup> MDE must review and approve or disapprove sponsors' applications and budgets within 30 days of receiving complete applications.<sup>15</sup>

In addition to reviewing application documents, federal regulations require MDE to conduct "pre-approval visits" of new CACFP and SFSP sponsors, as well as renewing SFSP sponsors that the department determines need additional oversight.<sup>16</sup> The purpose of these visits is to verify the accuracy of the information in the application and assess sponsors' ability to successfully operate the program.<sup>17</sup>

## Shortcomings in MDE's Oversight

MDE reviewed each of Feeding Our Future's annual applications for CACFP and SFSP, identified concerns, and provided technical assistance to the organization. Nevertheless, we identified several shortcomings in MDE's review of Feeding Our Future's applications.

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### **MDE's inaction to strengthen and exercise its authority to deny applications put the CACFP and SFSP programs' integrity at risk.**

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In this section, we discuss how the department:

- Failed to address what it sees as limits to its authority years before the start of the COVID-19 pandemic in March 2020.<sup>18</sup>
- Did not deny applications or take timely administrative action when Feeding Our Future did not address some serious and repetitive concerns MDE raised during its review of the organization's applications.

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<sup>14</sup> 7 *CFR*, secs. 225.6(d); and 226.6(b)(1)(xviii) and (b)(2)(vii) (2023). In addition to information in sponsor applications, federal regulations also direct MDE to consider sponsor applicants' past performance in child nutrition programs when determining their ability to meet performance standards.

<sup>15</sup> CACFP regulations specify "30 calendar days" (7 *CFR*, sec. 226.6(b)(3) (2023)). SFSP regulations state "30 days" (7 *CFR*, sec. 225.6(b)(3) (2023)). As permitted by law, sponsors can appeal MDE decisions to deny sponsor applications (7 *CFR*, secs. 225.13(a) and 226.6(k)(2)(i) (2023)). In Minnesota, appeals are made to an MDE panel, which consists of three MDE employees who were not involved in the action being appealed. After reviewing relevant documentation; analyzing relevant legal requirements; and if requested, holding a hearing, the panel issues a decision on whether to uphold MDE's denial. Although the appeal panel's decision is considered MDE's final administrative determination, state statutes permit that decision to be appealed directly to the Court of Appeals (*Minnesota Statutes* 2023, 14.69).

<sup>16</sup> 7 *CFR*, secs. 225.7(d) and 226.6(b)(1) (2023). Federal regulations require MDE to conduct preapproval visits of "All applicant [SFSP] sponsors that had operational problems noted in the prior year; and...All sites that the State agency has determined need a pre-approval visit" (7 *CFR*, secs. 225.7(d)(2) and (d)(3) (2023)). MDE has discretion to determine whether to conduct preapproval visits of (1) sponsors proposing to operate during unanticipated school closure; and (2) sponsors that are a school food authority, were reviewed by MDE under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review (7 *CFR*, sec. 225.7(d)(1) (2023)).

<sup>17</sup> 7 *CFR*, secs. 225.7(d) and 226.6(b)(1) (2023).

<sup>18</sup> The World Health Organization declared COVID-19 a pandemic in March 2020. As we explained in the Introduction, the federal government alleges that the individuals charged in relation to the alleged fraud scheme exploited CACFP and SFSP during the COVID-19 pandemic.

- Did not take steps to verify statements made by Feeding Our Future prior to approving its program applications, particularly during the time when MDE had serious concerns about the ability of Feeding Our Future to manage its growth and maintain the integrity of its nutrition program operations.

## MDE Did Not Seek Timely Legislative Action

As the state agency administering CACFP, federal regulations require MDE to establish a number of program procedures, including application review procedures to determine the eligibility of new and renewing sponsors.<sup>19</sup> Federal regulations also require MDE to establish factors it will consider in determining whether a new or renewing CACFP sponsor has sufficient staff to perform required monitoring responsibilities at all of its sites.<sup>20</sup> Further, regulations require MDE to “develop criteria for determining whether a new sponsoring organization’s participation will help ensure the delivery of benefits to otherwise unserved [sites] or participants.”<sup>21</sup>



### Requirement to Establish Procedures for CACFP Application Review

Each State agency must establish application review procedures...to determine the eligibility of new [sponsors], renewing [sponsors], and [sites] for which applications are submitted by sponsoring organizations.

— 7 *CFR*, sec. 226.6(b) (2023)



### Requirement for CACFP Staffing Factors

The State agency must establish factors...that it will consider in determining whether a new [or renewing] sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored [sites]. As part of the review of the... sponsoring organization’s management plan, the State agency must determine the appropriate level of staffing for each sponsoring organization, consistent with the staffing range of monitors set forth [in law] and the factors it has established.

— 7 *CFR*, secs. 226.6(b)(1) and (b)(2) (2023)

MDE has some internal procedures to guide its review of CACFP sponsor applications.<sup>22</sup> According to MDE officials, staff used these procedures—and the criteria within them—to review Feeding Our Future’s applications and provide technical assistance to the organization. However, a 2017 court decision involving a different sponsoring organization indicated that for MDE to be permitted to apply the procedures, they needed to be established in state administrative rules. Because the criteria did not exist in state law when MDE reviewed Feeding Our Future’s applications, MDE believed it had limited authority to require Feeding Our Future to take specific actions or to outright deny the organization’s applications.<sup>23</sup>

<sup>19</sup> 7 *CFR*, sec. 226.6(b) (2023).

<sup>20</sup> 7 *CFR*, secs. 226.6(b)(1) and (b)(2) (2023). By law, a sponsor overseeing centers must employ the equivalent of one full-time staff person to monitor each of the 25 to 150 sites it sponsors (7 *CFR*, sec. 226.16(b)(1) (2023)).

<sup>21</sup> 7 *CFR*, sec. 226.6(b)(1)(xi) (2023).

<sup>22</sup> MDE has not developed factors that it considers when determining whether sponsors have sufficient monitoring staff. When we asked MDE if it had established the factors required by law, MDE officials provided a document that contained no factors beyond the CACFP performance standards already found in federal regulations.

<sup>23</sup> The 2023 Legislature established some criteria in law on which MDE must evaluate applicant sponsors’ eligibility (*Laws of Minnesota 2023*, chapter 55, art. 9, sec. 2, codified as *Minnesota Statutes 2023*, 124D.111, subd. 2a). These criteria primarily relate to the financial viability performance standard, and not to the administrative capability or program accountability performance standards.

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**MDE did not seek legislative changes or rulemaking authority to codify application review criteria after a 2017 decision by the Minnesota Court of Appeals encouraged it to do so.**

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In 2016, MDE denied another nonprofit organization's—Partners in Nutrition's—request to expand from being a sponsor of a single site to being a sponsor of multiple sites because MDE determined that it could not demonstrate its financial viability. After an MDE administrative appeal panel upheld the department's denial, Partners in Nutrition appealed MDE's decision to the Minnesota Court of Appeals.<sup>24</sup>

In July 2017, the Minnesota Court of Appeals ruled that MDE could not deny Partners in Nutrition's application on the basis of the financial-viability criteria it had imposed.<sup>25</sup> Specifically, the court held that the criteria MDE used to evaluate Partners in Nutrition's financial viability were not specified in the federal regulations and were inconsistent with U.S. Department of Agriculture (USDA) guidance.

The court also noted that MDE's financial-viability criteria had not been approved by USDA. However, even if the criteria had been approved by USDA, the court noted that they would have needed to be promulgated through the state rulemaking process.<sup>26</sup> More specifically, the court included the following footnote in its 2017 decision:

MDE has not promulgated any administrative rules in relation to the CACFP. Although staffing levels is a topic for which promulgation appears necessary, both MDE and other stakeholders may benefit from rules governing MDE's application procedure generally.<sup>27</sup>

According to MDE officials, the department believes that it does not have rulemaking authority under state law. As a result, it did not attempt to adopt rules related to CACFP after the 2017 decision, nor did it request that the Legislature give it specific rulemaking authority. However, Minnesota statutes direct MDE to identify and propose needed legislative changes.<sup>28</sup> Given the federal requirement for application procedures, the urging by the Minnesota Court of Appeals to adopt rules for CACFP, and MDE's

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<sup>24</sup> In early 2016, Partners in Nutrition appealed MDE's initial denial of its application to an MDE administrative appeal panel. That panel determined that MDE's initial denial resulted from not following federal regulations, failing to set specific financial viability criteria, using inconsistent methodology, confusingly communicating, and impermissibly using financial projections. The appeal panel directed MDE to reassess Partners in Nutrition's application. On this reassessment, MDE again denied Partners in Nutrition's application, on the basis that the organization did not submit sufficient financial viability documentation. Partners in Nutrition again appealed this to an MDE administrative appeal panel; in August 2016, this panel upheld MDE's denial. Partners in Nutrition then appealed to the Minnesota Court of Appeals.

<sup>25</sup> *Partners in Nutrition's Appeal of Disapproval of Site Expansion in the CACFP Program*, 904 N.W.2d 223, 232-234 (Minn. Ct. App. 2017). MDE did not appeal the case to the Minnesota Supreme Court and eventually approved the nonprofit organization's expansion.

<sup>26</sup> *Ibid.*, 232 (Minn. Ct. App. 2017).

<sup>27</sup> *Ibid.*, 231 n. 5 (Minn. Ct. App. 2017).

<sup>28</sup> *Minnesota Statutes* 2023, 127A.06, requires that MDE recommend to the Legislature and the governor legislation relating to the state system of education that would make its laws "more readily understood and more effective in execution."



obligation in state law to identify and propose needed legislation, we believe MDE should have raised this issue for a legislative fix before the start of the alleged fraud in 2020.

As we discuss in the following section, MDE had, at times, significant concerns about Feeding Our Future’s ability to meet CACFP performance standards. However, because MDE had not proactively sought changes to state law, it was ill-prepared to address issues it later encountered with Feeding Our Future.

## MDE Approved Applications Despite Concerns

As noted above, federal regulations state that MDE “should use its discretion in determining whether the [sponsor’s] application, in conjunction with its past performance in CACFP,” adequately demonstrates the sponsor’s ability to meet the performance standards found in law.<sup>29</sup> Federal regulations also require MDE to deny a sponsor’s application if it does not meet the standards.<sup>30</sup>



### Requirement for Application Approval

The State agency must only approve the applications of those new and renewing sponsors that meet these performance standards, and must deny the applications of those new and renewing sponsors that do not meet the standards.

— 7 *CFR*, secs. 226.6(b)(1)(xviii) and (b)(2)(vii) (2023)

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## MDE approved Feeding Our Future’s CACFP sponsor applications, even after the organization did not address the department’s concerns.

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MDE reviewed Feeding Our Future’s annual CACFP sponsor applications and budgets, as required by federal law.<sup>31</sup> As Exhibit 3.1 shows, in most reviews, MDE raised concerns about Feeding Our Future’s finances and staffing. MDE also raised concerns regarding the feasibility of Feeding Our Future’s food service operations. These concerns related directly to the performance standards for CACFP sponsors (as outlined on page 21).

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<sup>29</sup> 7 *CFR*, secs. 226.6(b)(1)(xviii) and (b)(2)(vii) (2023). Since SFSP did not have performance standards until 2023, this discussion focuses primarily on Feeding Our Future’s CACFP applications, not SFSP applications.

<sup>30</sup> *Ibid.*

<sup>31</sup> 7 *CFR*, secs. 226.6(b) and 226.7(g) (2023). As we mentioned above, MDE must annually review sponsors’ budgets to determine “the allowability, necessity, and reasonableness of all proposed expenditures,” and to assess sponsors’ capabilities to manage, expend, and account for program funds in compliance with regulatory requirements and federal guidance (7 *CFR*, sec. 226.6(f)(1)(iv) (2023)).

## Exhibit 3.1

**MDE raised numerous concerns nearly every time it reviewed Feeding Our Future's CACFP applications or budget revisions.**

Despite its concerns, MDE approved each application or budget revision.

CACFP Program Year <sup>a</sup>	Type of Review	MDE's Concerns
2017 <sup>b</sup>	Initial Application	<ul style="list-style-type: none"> <li>• Inadequate financial resources (such as net assets and income) to meet financial viability performance criteria</li> <li>• Financial reports failed to meet generally accepted accounting principles</li> <li>• Board members' independence was undermined by their role as volunteer employees</li> <li>• Volunteer employees who were responsible for monitoring and administering CACFP also had full-time outside employment</li> </ul>
2018	Annual Application	<ul style="list-style-type: none"> <li>• Lack of financial or operational history to demonstrate financial viability (repeat concern)</li> </ul>
2019	Annual Application	<ul style="list-style-type: none"> <li>• No documented concerns</li> </ul>
2019	Budget Revision <sup>c</sup>	<ul style="list-style-type: none"> <li>• All 80 of Feeding Our Future's sites reportedly were preparing their own meals and snacks</li> <li>• Feeding Our Future's staff salaries were above average</li> <li>• Cash flow was insufficient to cover staff salaries and office space rental costs</li> <li>• Uncertainty about projected revenue from unnamed sites</li> <li>• Uncertainty about how administrative costs should be allocated given nonprogram revenue</li> </ul>
2020	Annual Application	<ul style="list-style-type: none"> <li>• Feeding Our Future's staff salaries were above average (repeat concern)</li> <li>• Lack of dedicated financial or accounting staff</li> <li>• Lack of information provided about compliance manager contract</li> <li>• Staff time allocated 100 percent to CACFP despite claims of nonprogram revenue</li> <li>• Lack of information on how the organization ensures CACFP funds are not spent on non-CACFP activities</li> <li>• Additional documentation and prior MDE approval needed before hiring two additional staff</li> <li>• Insufficient information about travel expenses</li> <li>• Higher-than-expected costs for training materials</li> </ul>

*Continued on the next page.*

CACFP Program Year <sup>a</sup>	Type of Review	MDE's Concerns
2021	Annual Application	<ul style="list-style-type: none"> <li>• Lack of dedicated financial or accounting staff (repeat concern)</li> <li>• Lack of information provided about compliance manager contract (repeat concern)</li> <li>• Projected income growth from sponsored sites was 176 percent</li> <li>• Large growth in meal claims for seven specific sites when compared to the previous program year</li> <li>• Lack of information about financial internal controls</li> <li>• Additional documentation and prior MDE approval needed before hiring 14 additional staff (repeat concern)</li> <li>• Inadequate justification for costs of office lease and office space expansion</li> <li>• Inadequate justification for some administrative expenses</li> <li>• Federal single audit not yet submitted</li> </ul>
2021	Budget Revision <sup>d</sup>	<ul style="list-style-type: none"> <li>• Larger number of sites than provided in application estimates</li> </ul>
2022	Annual Application	<ul style="list-style-type: none"> <li>• Unreasonable and noncompliant enrollment numbers for some CACFP sites</li> <li>• Uncertainties about site compliance with attendance, occupancy limit, Minnesota Department of Health food service licensing, and meal and snack service requirements</li> <li>• Lack of clarity about the location of some sites, including a proposed site already participating under another sponsor, and another site located at a private residence</li> <li>• Lack of clarity about the type of business (for profit or nonprofit) of some sites</li> <li>• Issues with forms for sites transferring between Feeding Our Future and other sponsors</li> </ul>

<sup>a</sup> CACFP program years begin on October 1 and end on September 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2017 began on October 1, 2016, and ended on September 30, 2017.

<sup>b</sup> In April 2017, MDE denied Feeding Our Future's 2017 CACFP sponsor application because it did not meet CACFP performance standards. Feeding Our Future appealed the denial. In June 2017, after receiving additional information from Feeding Our Future and clarification from the Minnesota Court of Appeals about the financial-viability performance standard, MDE's appeal panel approved Feeding Our Future's 2017 program year application.

<sup>c</sup> USDA guidance indicates that sponsors can submit budget revisions at any time after their budget is approved, as sponsors are "prohibited from spending CACFP funds in accordance with [amended budgets] until the amendments have been reviewed and approved by the State agency" (U.S. Department of Agriculture, Food and Nutrition Service, *Guidance for Management Plans and Budgets, A Child and Adult Care Food Program Handbook* (Washington, DC, December 2013), 43). Feeding Our Future initiated the 2019 budget revision.

<sup>d</sup> MDE required Feeding Our Future to submit a revised budget when the department found the organization "seriously deficient" in its operation of CACFP in March 2021. We discuss MDE's administrative action against Feeding Our Future and the serious deficiency process more broadly in Chapter 5.

Source: Office of the Legislative Auditor, analysis of Minnesota Department of Education documents.

Given the number of concerns MDE had when it reviewed many of Feeding Our Future's CACFP sponsor applications or budget revisions, MDE was right to question whether Feeding Our Future met performance standards provided by federal regulations. However, Feeding Our Future did not always make changes in response to MDE's concerns or provide all the information MDE requested. In these cases, we think MDE should have denied Feeding Our Future's applications or budgets, or taken other administrative actions, as a way to require the organization's compliance with federal regulations.<sup>32</sup>

One of the applications we believe MDE could have denied—or used as a basis for serious deficiencies—was Feeding Our Future's sponsor application for the 2021 CACFP program year, which MDE approved in October 2020. As Exhibit 3.1 shows, MDE raised a number of concerns when reviewing the application, many of which pertained directly to the extent to which the organization met CACFP performance standards and budget requirements. For example, MDE noted that the organization's application did not adequately document financial internal controls, as required under federal regulations.<sup>33</sup> (Internal controls are the policies and procedures an organization implements to safeguard funds to minimize incidences of fraud, waste, and abuse, and ensure that it administers programs in compliance with applicable laws and rules.) Further, MDE found that the organization lacked dedicated financial or accounting staff—a repeat concern and one that we think is reasonable given the size of Feeding Our Future's operation.<sup>34</sup>

In its application review, MDE noted that this lack of financial staff undermined internal controls related to fiscal integrity and prevented a reasonable separation of duties for an organization of its size. In September 2020, MDE requested information on how Feeding Our Future managed its finances and internal controls. Feeding Our Future did not provide this information to MDE. MDE approved Feeding Our Future's 2021 CACFP application anyway.

We asked MDE officials why the department approved some of Feeding Our Future's applications despite the organization's failure to respond to MDE's concerns. MDE repeatedly highlighted a lack of detail in federal law concerning CACFP program requirements, a lack of USDA guidance and support for MDE actions, and its own lack of rulemaking authority under Minnesota law. Additionally, MDE officials told us that the department thought Feeding Our Future would challenge the legality of its application review in court if it denied any of the organization's sponsorship applications.<sup>35</sup>

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<sup>32</sup> While MDE approved all of Feeding Our Future's budgets, it did deny budget items related to a contract for a compliance manager in program years 2020 and 2021.

<sup>33</sup> 7 *CFR*, secs. 226.6(b)(1)(xviii)(C)(2) and (b)(2)(vii)(C)(2) (2020).

<sup>34</sup> In the 2020 CACFP program year (October 2019 through September 2020), Feeding Our Future served roughly 2.6 million CACFP meals and snacks at 105 sites and managed roughly \$5.3 million in reimbursements. In addition, from June 2020 through September 2020, Feeding Our Future served 2.4 million SFSP meals and snacks at 33 SFSP sites worth \$7.2 million in reimbursements. Feeding Our Future estimated in its 2021 CACFP program year application that it would serve nearly 7.2 million CACFP meals and snacks at 138 sites worth \$15.6 million in reimbursements.

<sup>35</sup> As we describe in Appendix B, Feeding Our Future sued MDE in Ramsey County District Court in November 2020 alleging, among other things, that the department delayed its approval of the organization's site applications beyond time limits found in federal law. In 2021, Feeding Our Future twice appealed MDE's denials of its site applications to the Minnesota Court of Appeals, claiming that MDE's site application review was arbitrary, capricious, and in one of its two appeals, sometimes based upon misrepresentations made by MDE.

A lack of detail in federal law or USDA guidance does not relieve MDE of its legal duty to deny a sponsor's application if it believes the sponsor cannot meet CACFP performance standards.<sup>36</sup> As we explain in Chapter 5, MDE declared Feeding Our Future seriously deficient in March 2021 for failing to meet all three CACFP performance standards. MDE based its determination on Feeding Our Future's lack of financial or accounting staff and several other concerns it raised about Feeding Our Future's operations when it reviewed the organization's 2021 CACFP application in the fall of 2020. It is difficult to understand how concerns serious enough to prompt administrative action in March 2021 were not serious enough to justify denying the organization's CACFP application (or initiating a more timely serious deficiency process) in the fall of 2020.<sup>37</sup>

Finally, had MDE pursued state-specific "additional requirements" permitted under federal regulations, MDE could have strengthened its ability to hold Feeding Our Future to program requirements and protect the integrity of the program.<sup>38</sup> If MDE truly believed it could not defend a denial of Feeding Our Future's CACFP application in court, it should have taken steps to clarify its interpretation of CACFP performance standards in state law, as we discussed above.

### Lack of Application Verification

Federal regulations provide several ways MDE can verify information sponsors submit in their applications and ensure renewing sponsors continue to meet program requirements.<sup>39</sup> For example, regulations require MDE to conduct preapproval visits of certain CACFP and SFSP sponsor applicants to (1) verify the accuracy of the information provided in their applications and (2) assess applicants' ability to manage their nutrition programs.<sup>40</sup> As another example, federal regulations require participating

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<sup>36</sup> 7 *CFR*, secs. 226.6(b)(1)(xviii) and (b)(2)(vii) (2023).

<sup>37</sup> Federal regulations and USDA guidance highlight application renewal as a time at which state agencies can find sponsors seriously deficient, including for failure to meet the performance standards found in law (7 *CFR*, sec. 226.6(c)(2)(i) (2023)); and U.S. Department of Agriculture, Food and Nutrition Service, *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations, A Child and Adult Care Food Program Handbook* (Washington, DC, February 2015), 10-11.

<sup>38</sup> Federal regulations permit states to impose additional participation requirements for CACFP, as long as they are not inconsistent with federal regulations and are approved by USDA (7 *CFR*, sec. 226.25(b) (2023)). Further, federal guidance for CACFP states that "State agencies may not deny an application, disallow meals that are otherwise reimbursable, assess an overclaim, declare a sponsor seriously deficient, or terminate a sponsor based solely on the violation of an additional State agency requirement. Instead, such a violation may result in a finding, whereby the State agency may require corrective action." (U.S. Department of Agriculture, Food and Nutrition Service, Memorandum CACFP 09-2013, *Additional State Agency Requirements in the Child and Adult Care Food Program* (Washington, DC, March 2013), 2.)

<sup>39</sup> As stated earlier in this chapter, federal regulations direct MDE to consider CACFP sponsor applicants' past performance in the program, "in conjunction with" its application, when determining if a sponsor meets performance standards (7 *CFR*, secs. 226.6(b)(1)(xviii) and (b)(2)(vii) (2023)). For SFSP sponsor applicants, federal regulations require MDE to consider applicants' past performance in *all* federal child nutrition programs when assessing their ability to meet SFSP performance standards (7 *CFR*, sec. 225.6(d) (2023)). The Minnesota Court of Appeals recently affirmed MDE's authority to consider a CACFP sponsor applicant's past performance in SFSP when assessing its ability to meet CACFP performance standards (*Re: Youth Leadership Academy dba Gar Gaar Family Services Appeal of Denial of Application for the Child and Adult Care Food Program (CACFP)*, A22-0378 (Minn. Ct. App. 2023)).

<sup>40</sup> 7 *CFR*, secs. 225.7(d) and 226.6(b)(1) (2023).

sponsors to maintain records demonstrating their compliance with federal regulations, including documentation of meals and snacks served.<sup>41</sup> Federal regulations require sponsors to make these records available to MDE upon request.<sup>42</sup>

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**MDE did not always take steps to verify statements made by Feeding Our Future prior to approving its CACFP sponsor applications.**

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At times, MDE took steps to verify assertions Feeding Our Future made in application materials. For example, MDE questioned the organization's financial viability when reviewing its 2017 CACFP sponsorship application. MDE initially denied the application, in part because Feeding Our Future's application materials did not demonstrate that it had adequate financial resources to operate CACFP on a daily basis. After Feeding Our Future appealed MDE's decision and continued to insist that it was financially viable, MDE required the organization to submit additional financial documentation as a condition of approving its application for the 2018 CACFP program year.

However, in subsequent years, MDE did not always verify information Feeding Our Future submitted in its annual applications. We think such steps would have been appropriate in the context of Feeding Our Future's dramatic growth, and, as we discuss later in this chapter, documented weaknesses in the organization's operations.<sup>43</sup>

For example, during its review of Feeding Our Future's revised budget for the 2019 CACFP program year, MDE noted that Feeding Our Future did not have catering contracts in its budget for any of its 80 proposed sites. In effect, Feeding Our Future was claiming that all 80 of its sites had the food preparation equipment, available space, physical layout, and trained staff necessary to prepare meals and snacks that met complex program requirements, including those related to meal and snack portions, nutrition, preparation, and food safety. During the previous CACFP program year (the organization's first year in operation), six of Feeding Our Future's sites received reimbursements. Only two of these sites prepared food onsite. Despite the authority to do so, MDE did not request documentation that could have confirmed whether or not these 80 proposed sites had the ability to prepare food onsite, nor did it visit a selection of sites to assess the reasonableness of Feeding Our Future's claim.

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<sup>41</sup> 7 *CFR*, secs. 225.15(c)(1); 226.10(d); and 226.15(e) (2023).

<sup>42</sup> 7 *CFR*, secs. 225.15(c)(1) and 226.10(d) (2023). MDE's CACFP and SFSP sponsor applications also require sponsors to certify their understanding that USDA and MDE may verify the information they provided in sponsor applications and related supporting documentation.

<sup>43</sup> This issue is not unique to MDE. In 2018, USDA's Office of Inspector General found that the California Department of Education did not adequately or independently verify some sponsor-provided application information, including information related to sponsors' eligibility and financial management and accountability (U.S. Department of Agriculture, Office of Inspector General, *California's Controls Over Summer Food Service Program*, Audit Report 27004-0001-41 (Washington, DC, November 2018), 5-7). Similarly, in 2019, USDA's Office of Inspector General found that Florida's Department of Agriculture and Consumer Services approved sponsors' site applications without first confirming whether sponsors performed corrective actions proposed during the application review process (U.S. Department of Agriculture, Office of Inspector General, *Florida's Controls Over Summer Food Service Program*, Audit Report 27004-0001-31 (Washington, DC, August 2019), 7-9).

As another example, during its review of Feeding Our Future’s 2021 CACFP application, MDE raised concerns about the organization’s projected growth, among other things. MDE requested additional information about the growth of seven specific sites.<sup>44</sup> (For one of the seven sites, MDE asked Feeding Our Future to explain how the site had the capacity to serve “a comparable number of meals” as “the entire St. Paul Public School District provides” through federal nutrition programs.<sup>45</sup>) Even after Feeding Our Future did not provide justification for these sites’ significant growth, MDE did not visit the sites virtually or in person to observe CACFP meal and snack service.<sup>46</sup> MDE also did not request documentation—such as attendance, meal and snack counts, or food preparation records—to determine if these rapidly growing sites were in compliance with CACFP regulations.

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**Despite inaccuracies in Feeding Our Future’s initial SFSP sponsorship application, and MDE’s concerns about its participation in CACFP, MDE approved the organization as a sponsor in SFSP.**

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Feeding Our Future first applied to be an SFSP sponsor in the spring of 2020. According to MDE application review documentation, the organization planned to begin operations with 9 sites and then expand to 15 sites during the remainder of the program year. After reviewing the organization’s application, MDE conducted a virtual preapproval visit in June 2020 of Feeding Our Future’s headquarters.

MDE’s preapproval visit produced “action items” related to all nine of Feeding Our Future’s initial SFSP sites. MDE found that Feeding Our Future’s application, as originally submitted, failed to accurately describe meal and snack service (such as which meals and snacks the sites would serve, meal and snack service times, and how the sites would serve meals and snacks) at eight sites. MDE also requested that Feeding Our Future provide new or updated meal vendor contracts for eight of its sites.

Feeding Our Future was generally responsive to MDE’s requests to fix these errors. For example, Feeding Our Future corrected the catering contracts for its proposed sites and updated site documentation so that they indicated that the sites would be receiving meals and snacks from a vendor rather than preparing food onsite. However, given Feeding Our Future’s lack of responsiveness to MDE’s concerns with its CACFP operations, we expected MDE to have conducted more preapproval visits of Feeding Our Future’s SFSP sites, in addition to its virtual visit of Feeding Our Future’s headquarters. MDE visited only 2 of the 18 sites that received reimbursements during the first three months of the organization’s SFSP operations. MDE observed meal service at only one of the two sites, and both visits were scheduled in advance and conducted virtually.

MDE approved Feeding Our Future’s SFSP application for the 2021 program year in June 2020.

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<sup>44</sup> As of May 2024, the U.S. Department of Justice had named four of these seven sites in the charging documents related to the alleged fraud. See Chapter 2 for more information.

<sup>45</sup> CACFP Financial Analyst, Minnesota Department of Education, letter to Executive Director, Feeding Our Future, *RE: FY21 Budget Review for Child and Adult Care Food Program (CACFP)*, September 28, 2020.

<sup>46</sup> MDE conducted virtual visits of two of the seven sites for SFSP in August 2020, prior to its September 2020 review of Feeding Our Future’s 2021 CACFP program year application.

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**MDE originally denied Feeding Our Future's SFSP application for the 2022 program year, but then approved the application without having complete information.**

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According to federal regulations, MDE may not approve an SFSP application for a sponsor who has been deemed to have serious deficiencies in its operation of a federal nutrition program.<sup>47</sup> As we discuss further in Chapter 5, MDE found Feeding Our Future seriously deficient in its administration of CACFP between January 15, 2021, and June 4, 2021, and in its administration of SFSP between January 15, 2021, and May 13, 2021. As a result, when MDE received Feeding Our Future's SFSP sponsorship application for the upcoming 2022 program year in the spring of 2021, it denied the application as required by federal regulations.<sup>48</sup> However, after MDE determined on June 4, 2021, that Feeding Our Future had corrected the deficiencies, MDE approved Feeding Our Future's SFSP application.

MDE officials told us that the department approved Feeding Our Future's 2022 SFSP program year application based, in part, on the actions the organization took to correct the serious deficiencies. However, as we discuss in greater detail in Chapter 5, we found MDE's assessment of these corrective actions to be inadequate. As a result, weaknesses in MDE's assessment of Feeding Our Future's corrective actions became weaknesses in MDE's evaluation of Feeding Our Future's 2022 SFSP program year application.

Additionally, the fact that MDE initiated a serious deficiency process in early 2021 with Feeding Our Future indicates that the organization had experienced operational problems prior to the 2022 SFSP program year. As permitted by law, this should have prompted MDE to conduct preapproval visits of Feeding Our Future and/or some of its sites to confirm the accuracy of its 2022 SFSP application and assess the organization's ability to successfully operate SFSP.<sup>49</sup> However, MDE did not conduct any preapproval visits before approving Feeding Our Future's application in June 2021.

Further, as we discuss later in this chapter, MDE initiated, but did not complete, an SFSP administrative review of Feeding Our Future in August 2020. Given the decisions to pause its administrative review and not to conduct preapproval visits, MDE approved Feeding Our Future's application without having a full understanding of the performance and compliance of the organization's summer food service program.

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<sup>47</sup> 7 *CFR*, secs. 225.6(b)(9) and 225.11(c) (2021).

<sup>48</sup> *Ibid.*

<sup>49</sup> 7 *CFR*, sec. 225.7(d)(1) (2021). From August 31, 2020, to June 30, 2021, USDA waived requirements related to preapproval visits of SFSP sponsors due to the COVID-19 pandemic. However, this waiver did not prohibit MDE from conducting preapproval visits. (U.S. Department of Agriculture, Food and Nutrition Service, COVID-19: Child Nutrition Response #57, *Nationwide Waiver to Allow Reimbursement for Meals Served Prior to Notification of Approval and Provide Flexibility for Pre-Approval Visits in the Summer Food Service Program*, September 11, 2020; extended by U.S. Department of Agriculture, Food and Nutrition Service, COVID-19: Child Nutrition Response #69, *Nationwide Waiver to Allow Reimbursement for Meals Served Prior to Notification of Approval and Provide Flexibility for Pre-Approval Visits in the Summer Food Service Program-EXTENSION*, October 9, 2020.)



## Recommendations

As outlined in Exhibit 3.1, MDE had concerns about nearly all of Feeding Our Future's sponsor applications and budget revisions. While Feeding Our Future was responsive to some of MDE's concerns, it ignored others and continued to operate.

Although our findings focused on MDE's approval of Feeding Our Future's applications, the issues we identified raise broader concerns about the rigor of MDE's application approval process. We think MDE needs to make improvements to this process, aided by legislative changes.

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### RECOMMENDATION

**The Legislature should either establish criteria in statute or give MDE the authority to conduct rulemaking to establish criteria that the department must consider when determining whether to approve organizations for CACFP or SFSP.**

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To ensure program effectiveness and integrity, MDE's reviews of sponsor applications must include a substantive assessment of organizations' ability to meet program performance standards. Such an assessment must be based on clearly defined program standards and authority. We think MDE—and CACFP and SFSP sponsors and sites—would benefit from application criteria specified in state law.

MDE officials told us that they believe the department's current application review process includes a substantive assessment of sponsors' compliance with performance standards. However, as previously noted above, MDE officials also told us that they believed they lacked legal justification to deny Feeding Our Future's applications. We question the adequacy of an application review process that included a substantive assessment of Feeding Our Future's performance, but also deprived MDE of the legal grounds to act on its assessment and deny the organization's application. As a result, when working with the Legislature to develop criteria in law—or when writing administrative rules—MDE should reevaluate its application review policies and consider what changes may be needed so that its application process *requires*, rather than *encourages*, sponsors' compliance with performance standards.

As MDE and the Legislature work to identify requirements that should be established in law, they should remember that state requirements for CACFP and SFSP (1) must receive USDA approval; and (2) cannot be the *sole basis* upon which MDE takes an adverse action, such as denying an application.<sup>50</sup> Rather than seeking to create new program requirements that are substantively distinct from federal law, the Legislature and MDE should focus their efforts on using state statutes and rules to interpret, clarify, and implement existing federal CACFP and SFSP regulations.

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<sup>50</sup> 7 *CFR*, secs. 225.18(f) and 226.25(b) (2023); U.S. Department of Agriculture, Food and Nutrition Service, Memorandum CACFP 09-2013, *Additional State Agency Requirements in the Child and Adult Care Food Program* (Washington, DC, March 2013), 2; and U.S. Department of Agriculture, Food and Nutrition Service, Memorandum SFSP 06-2013 - REVISED, *Additional State Agency Requirements in the Summer Food Service Program* (Washington, DC, January 2013), 2.

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## RECOMMENDATION

### **MDE should take additional steps to verify information provided in support of sponsorship applications submitted by high-risk applicants.**

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In addition to required preapproval visits, MDE should take additional steps—such as conducting desk audits or visits of sites, food preparation facilities, and vendors—to verify statements and documents provided in support of certain sponsor applications. Such activities should be based on an applicant’s risk of noncompliance, so that sponsors exhibiting rapid growth or those with a history of operational issues, for example, receive greater scrutiny. And, if the information an organization supplies in its application seems implausible, unusual, or unexpected relative to its past performance in the program, MDE should investigate the irregularity, as required by law.<sup>51</sup> On the other hand, when sponsors are smaller in size and have long histories of program compliance, it may be more appropriate for MDE to rely on unverified application documentation when determining whether to approve or disapprove sponsor applications.

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## Administrative Reviews

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By law, MDE is responsible for helping sponsors comply with CACFP and SFSP regulations.<sup>52</sup> One way in which MDE does this is through administrative reviews. As Exhibit 3.2 shows, federal regulations establish requirements for the frequency and content of administrative reviews of sponsors and sites in both CACFP and SFSP.<sup>53</sup>

Federal regulations also specify how MDE should select sponsors and sites for inclusion in its reviews.<sup>54</sup> Further, USDA provides guidance to state agencies on how they should prioritize their review efforts. For example, USDA encourages, but does not require, state agencies to select CACFP and SFSP sponsors and sites for review based on risk.<sup>55</sup>

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<sup>51</sup> Federal regulations require MDE to promptly investigate any “irregularities” it discovers in connection with CACFP and SFSP operations and “take appropriate action to correct any irregularities” (7 *CFR*, secs. 225.11(b) and 226.6(n) (2023)). We discuss MDE’s investigations of alleged irregularities in Feeding Our Future’s operations in Chapter 4.

<sup>52</sup> 7 *CFR*, secs. 225.6(a)(1); 225.7(a) and (e); and 226.6(a) and (m) (2023).

<sup>53</sup> As described in Exhibit 3.2, MDE must conduct administrative reviews of CACFP independent centers as well as sponsors and a percentage of sponsored sites. Independent centers are not sponsored and can be child-care centers, afterschool or outside-school-hours care centers, emergency shelters, and adult day care centers. Like CACFP sponsors, they enter into an agreement with MDE to assume administrative and financial responsibility for CACFP operations.

<sup>54</sup> 7 *CFR*, secs. 225.7(e)(2) and (e)(5); and 226.6(m)(2) and (m)(6) (2023).

<sup>55</sup> Several risk factors mentioned in USDA guidance are especially relevant to Feeding Our Future: (1) sponsor size; (2) sponsors and sites with high meal claims compared with the other sponsors and sites in the state; (3) sponsors with many sites; and (4) sites claiming more than 90 percent attendance every month. (U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 9-10; and U.S. Department of Agriculture, *Summer Food Service Program State Agency Monitor Guide* (Washington, DC, February 2017), 13).

## Exhibit 3.2

**Federal regulations provide requirements related to the number, frequency, and content of administrative reviews of CACFP and SFSP sponsors and sites.**

Requirement Type	Requirement
Minimum Number of Reviews	<p>MDE must review:</p> <ul style="list-style-type: none"> <li>• At least 33.3 percent of all CACFP sponsors and independent centers annually. At least 15 percent of the total number of CACFP site reviews must be unannounced.</li> <li>• The number of SFSP sponsors whose program reimbursements, in aggregate, accounted for at least one-half of total SFSP reimbursements in the prior year.</li> </ul> <p>Reviews of CACFP sponsors with 100 sites or less must include 10 percent of the sponsor's sites; reviews of CACFP sponsors with more than 100 sites must include 5 percent of the first 1,000 sites and 2.5 percent of sites in excess of 1,000.</p> <p>Reviews of SFSP sponsors with 10 or more sites must include at least 10 percent of the sponsor's sites; reviews of SFSP sponsors with fewer than 10 sites must include at least 1 site.</p>
Review Frequency and Timing	<p>New CACFP sponsors with 5 or more sites must be reviewed within 90 days of the beginning of program operations. Ongoing/renewing CACFP sponsors with 1 to 100 sites must be reviewed at least once every three years, and CACFP sponsors with more than 100 sites must be reviewed at least once every two years.</p> <p>New SFSP sponsors must be reviewed during their first year of operation. Ongoing/renewing SFSP sponsors must be reviewed at least once every three years and the year after any significant operational problems occur.</p>
Review Priorities	<p>When choosing CACFP sponsors for review, MDE must target for more frequent review sponsors whose prior review included a finding of serious deficiency. When choosing SFSP sponsors and sites to review, MDE must, at a minimum, consider the sponsors' and sites' previous participation in the program, current and previous SFSP performance, and the results of previous reviews.</p> <p>MDE must develop criteria for SFSP site selection that allow it to meet the minimum number of site reviews required by SFSP regulations.<sup>a</sup> MDE must select sites that reflect the sponsor's entire population of sites and consider characteristics such as the:</p> <ul style="list-style-type: none"> <li>• Maximum number of meals the sites are approved to serve.</li> <li>• Methods of food preparation.</li> <li>• Time since MDE's last site review.</li> <li>• Type of site and its physical location.<sup>a</sup></li> </ul> <p>MDE may consider additional criteria when selecting SFSP sites to review, including recommendations from the sponsor or potential errors or large changes in meal counts.<sup>a</sup></p> <p>Federal guidance for CACFP and SFSP encourages state agencies to develop risk factors to identify high-risk sponsors or sites that should be prioritized for onsite review. Recommended high-risk factors include:</p> <ul style="list-style-type: none"> <li>• CACFP and SFSP sponsors or sites with high numbers of meal claims compared to other sponsors or sites.</li> <li>• CACFP and SFSP sponsors with many sites, larger sites, or a large number of participating children.</li> <li>• CACFP sponsors or sites claiming more than 90 percent attendance each month.</li> <li>• CACFP sites with an average daily participation greater than enrollment.</li> <li>• CACFP sponsors or sites claiming more than two meals and one snack or one meal and two snacks for each participant each day.</li> </ul>

*Continued on the next page.*

## Exhibit 3.2 (continued)

Requirement Type	Requirement
Review Content	<p>MDE must review <b>CACFP</b> sponsors<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• Financial management, including administrative and operational costs, program and nonprogram income, accounting systems, accuracy of claims processing and reimbursements for claimed meals and snacks, and required audits.</li> <li>• Monitoring of sites, including whether they have adequate numbers of monitoring staff, how frequently they have conducted site reviews, and whether they have a system to verify enrollment and attendance at their sites.</li> <li>• Training records; records retention policies; and procurement and contracts with food vendors, food service management companies, and administrative services providers.</li> </ul>
	<p>MDE must review <b>SFSP</b> sponsors<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• Expenditures, including whether spending is allowable, consistent with budgeted costs, compliant with USDA guidance, and comparable to the previous year's expenditures.</li> <li>• Administrative spending, including its reasonableness and whether it interferes with quality meal service.</li> <li>• Food service revenues and net cash resources.</li> </ul>
	<p>Related to site operations, MDE must:<sup>b</sup></p> <ul style="list-style-type: none"> <li>• Confirm the accuracy of five days of <b>CACFP</b> meal and snack counts in comparison to attendance and/or enrollment records.</li> <li>• Validate <b>SFSP</b> meal claims and determine rate of meal claim errors by reconciling daily meal and snack counts, requests for reimbursements, and food delivery receipts for a sample of sponsored sites.<sup>a</sup></li> <li>• Verify eligibility for free and reduced-price <b>CACFP</b> meals.</li> <li>• Review <b>CACFP</b> site staff training records and meal production and service records, including menus, nutritional labels, and meal and snack service times.</li> <li>• Ensure <b>CACFP</b> sites have active child-care licenses, food production permits, and health inspection reports, when relevant.</li> </ul>

<sup>a</sup> During Feeding Our Future's participation in SFSP, this requirement was not included in federal regulations; see 7 *CFR*, sec. 225.7(d)(2) (2020).

<sup>b</sup> Federal regulations do not explicitly require MDE to include meal service observations during administrative reviews of sponsors. However, USDA guidance handbooks recommend that MDE staff observe meal service at sponsored sites during their administrative reviews.

Source: Office of the Legislative Auditor, summary of 7 *CFR*, secs. 225.7(e) and 226.6(m) (2023); U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014); and U.S. Department of Agriculture, *Summer Food Service Program State Agency Monitor Guide* (Washington, DC, February 2017).

When MDE discovers noncompliance during an administrative review, federal regulations require sponsors to take corrective action to resolve the noncompliance.<sup>56</sup> SFSP regulations require, and USDA’s guidance for CACFP recommends, that MDE conduct follow-up reviews to ensure that sponsors’ and sites’ planned corrective actions were actually implemented.<sup>57</sup> As we discuss further in Chapter 5, repeat or flagrant instances of noncompliance discovered during administrative reviews may result in a sponsor being designated as seriously deficient and subject to termination from CACFP or SFSP participation.

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**MDE’s only administrative review of Feeding Our Future’s CACFP operations—conducted in 2018—resulted in serious findings that required follow-up, but MDE never conducted a follow-up review.**

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MDE conducted an administrative review of Feeding Our Future in December 2018, roughly four months after the organization made its first meal claims in August 2018.<sup>58</sup> The review included onsite visits of 4 of the organization’s 23 sites and resulted in 22 findings across 11 of the 13 areas included in the review. The review’s analysis of meal claims, enrollment, attendance, and meal production and service records focused on October 2018.<sup>59</sup> Select MDE findings are presented in Exhibit 3.3. MDE documents indicate that it considered all 11 review areas with findings as candidates for a possible follow-up review.

Many of the findings in Exhibit 3.3 are related to issues that increase the risk of fraud. For example, MDE found that one or more of the four sites included in the review had failed to collect child enrollment information, incorrectly inflated average daily attendance, claimed unallowable food service expenses, improperly observed or counted meals and snacks at the time of meal service, and/or failed to include the amount of food prepared or number of meals delivered in meal preparation reports.

In addition to the findings at Feeding Our Future’s sites, several other findings indicated deficiencies in the ability of the organization to manage its CACFP program. For example, Feeding Our Future’s site monitoring forms revealed that it had (1) failed to follow up on findings from its site visits to ensure that sites took corrective action and (2) improperly verified (or failed to document its verification of) meal claims from

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<sup>56</sup> 7 CFR, secs. 225.7(k); 225.11(f)(1); and 226.6(m)(3)(iv) and (o) (2023); and U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 46, 56.

<sup>57</sup> 7 CFR, secs. 225.7(k) and 225.11(f)(1) (2023). Unlike SFSP regulations, CACFP regulations do not explicitly require MDE to conduct follow-up reviews, but CACFP regulations reference “follow-up efforts” in the same section as it discusses administrative reviews and corrective actions (7 CFR, sec. 226.6(m) (2023)). USDA guidance documents provide best practices for MDE’s follow-up reviews: U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 57; and U.S. Department of Agriculture, *Summer Food Service Program State Agency Monitor Guide* (Washington, DC, February 2017), 58, 65.

<sup>58</sup> Federal regulations required MDE to review new sponsors of five or more sites within the first 90 days of operations (7 CFR, sec. 226(m)(6)(iii) (2018)). Three Feeding Our Future sites received reimbursement for claimed meals and snacks in August 2018, and six Feeding Our Future sites received reimbursement for claimed meals and snacks in September 2018.

<sup>59</sup> MDE’s administrative review also included menus from December 2018.

those sites. At a more general level, MDE found that Feeding Our Future had outdated management policies that failed to specify how it conducted routine checks of submitted claims, handled meal disallowances and overclaims, notified sites of noncompliance, or evaluated sites' corrective action plans.

### Exhibit 3.3

## MDE found deficiencies in many areas of Feeding Our Future's CACFP operations in 2018.

Program Area	Findings and Observations
<p><b>Food Quantity and Production</b></p> <p>MDE ensures that meal production records document what food was prepared and how many meals and snacks were produced.</p>	<ul style="list-style-type: none"> <li>• Records failed to fully document food items prepared and portions served.               <ul style="list-style-type: none"> <li>○ Meal production reports did not include amount of food prepared and/or number of meals delivered (2 sites).</li> <li>○ Meal production records did not match dated menu (1 site).</li> <li>○ Portion menu not posted in serving area (1 site).</li> <li>○ Child Nutrition labels or Product Formulation Statements were not on file to demonstrate how commercially prepared foods credit toward the meal pattern (at least 1 site).<sup>a</sup></li> </ul> </li> <li>• Snack that failed to meet nutritional requirements claimed (1 site).</li> </ul>
<p><b>Meal Service Observation</b></p> <p>MDE observes meal service to ensure service meets federal regulations, including meal pattern requirements and whether meal and snack counts are accurately taken at the time of meal service.</p>	<ul style="list-style-type: none"> <li>• Special diet documentation did not meet program requirements (1 site).</li> <li>• Fluid milk meal pattern requirements not met (2 sites).<sup>a</sup></li> <li>• Minimum portion size of fruit and grain not served (1 site).</li> <li>• Breakfast and snack counts not recorded at time of meal service (1 site).</li> <li>• Site staff did not monitor food items taken and declined by children during meal service (1 site).</li> <li>• Food that did not meet infant meal pattern found in infant room refrigerator (1 site).<sup>a</sup></li> <li>• Infant meal pattern not posted in food preparation area at infant room (1 site).<sup>a</sup></li> </ul>
<p><b>Menus</b></p> <p>MDE ensures menus meet meal pattern requirements.<sup>a</sup></p>	<ul style="list-style-type: none"> <li>• Milk fat content not documented (4 sites).</li> <li>• Labels and receipts did not document whole-grain-rich food items (1 site).</li> <li>• Breakfast menu substitutions not recorded (1 site).</li> </ul>
<p><b>Supporting Documents and Training</b></p> <p>MDE reviews sponsor and site training records to ensure the sponsor conducted and documented required training.</p>	<ul style="list-style-type: none"> <li>• Adequate CACFP site staff training documentation was not maintained (3 sites).               <ul style="list-style-type: none"> <li>○ Lack of documentation of required site staff training (1 site).</li> <li>○ Training records did not include date of training (2 sites).</li> </ul> </li> </ul>
<p><b>Multisite Sponsor Management Plan</b></p> <p>MDE ensures that sponsor's management plan reflects current operations and promotes compliance with the performance standards found in federal law.</p>	<ul style="list-style-type: none"> <li>• The management plan did not reflect current program operations.</li> <li>• The plan stated there are no paid employees when sponsor had paid employees at the time of review.</li> <li>• Fiscal accountability training for Board of Directors not documented.</li> <li>• Lack of detail about how administrative funds are separated from reimbursements.</li> <li>• No policy regarding sponsor review and approval of site meal claims.</li> <li>• Lack of written procedures related to sponsor monitoring of sites. Missing or incomplete elements included conducting preapproval visits, issuing written findings to sites, reviewing sites' corrective actions, and making claim reductions or disallowances.</li> </ul>

*Continued on the next page.*

Program Area	Findings and Observations
<p><b>Multisite Monitoring</b></p> <p>MDE ensures that the sponsor is monitoring sites in compliance with requirements of federal law.</p>	<ul style="list-style-type: none"> <li>• Sponsor's monitoring visits of its sites did not meet program requirements.               <ul style="list-style-type: none"> <li>○ Meal counts from day of visit were improperly compared to counts from the previous five days of meal counts (1 site).</li> <li>○ Five-day meal count reconciliation not documented (1 site).</li> <li>○ Sponsor did not follow up on previous findings of noncompliance found at site (1 site).</li> </ul> </li> <li>• Agreements between Feeding Our Future and sites were not complete due to missing signature dates (16 sites).</li> <li>• Sponsor did not check the names of board members at nonprofit sites to make sure they were not on a list maintained by the federal government of individuals and entities disqualified from participating in child nutrition programs (all nonprofit sites).</li> </ul>
<p><b>Child Enrollment Forms</b></p> <p>MDE checks that sponsor annually collected enrollment forms and forms are accurately completed. Forms establish children's normal days and hours of attendance, and types of meals received.</p>	<ul style="list-style-type: none"> <li>• Enrollment information not collected (1 site).</li> </ul>
<p><b>Attendance and Meal Claim Verification</b></p> <p>MDE ensures that sites accurately record attendance and count meals and/or snacks.</p>	<ul style="list-style-type: none"> <li>• Average daily attendance overreported (2 sites).               <ul style="list-style-type: none"> <li>○ Total attendance overcounted (2 sites).</li> <li>○ Number of days in operation undercounted (1 site).</li> <li>○ Inconsistent method of counting meals across classrooms (1 site).</li> </ul> </li> <li>• Meal and snack counts were used to generate attendance instead of counting attendance and meal counts separately (1 site).</li> </ul>
<p><b>Fiscal Integrity</b></p> <p>MDE reviews sponsor's financial records and management policies to ensure all funds are properly received, held, and dispersed. Includes ensuring that program funds only pay for allowable costs and that the sponsor's processes for approving meal claims and paying reimbursements are accurate and timely.</p>	<ul style="list-style-type: none"> <li>• Unallowable food service expenses were reported as CACFP expenses (2 sites).               <ul style="list-style-type: none"> <li>○ Food that did not meet program nutritional requirements misreported as allowable program expense (1 site).</li> <li>○ Expenses for food served to adults and children not participating in the program misreported as allowable program expense (1 site).</li> </ul> </li> <li>• Site prepares food onsite for children at site and is a food vendor for another child-care center without adequate accounting systems to separate the costs of vended meal operations from the site's CACFP program operations (1 site).</li> </ul>
<p><b>Procurement</b></p> <p>MDE reviews procurement documentation to ensure sponsor and site procurement processes meet federal regulations.</p>	<ul style="list-style-type: none"> <li>• Site used "micro purchasing" procedures, but only purchased from one vendor (1 site).</li> <li>• Vendor used by site not included in required price comparisons (1 site).</li> </ul>
<p><b>Civil Rights</b></p> <p>MDE ensures sponsor complies with civil rights laws and regulations, including those related to race, color, national origin, sex, and disability.</p>	<ul style="list-style-type: none"> <li>• Nondiscrimination statement was not included in CACFP parent handbook (2 sites).</li> </ul>

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## Exhibit 3.3 (Continued)

Program Area	Findings and Observations
<p><b>Household Income Statements (HIS)</b> MDE checks that the sponsor collected HIS forms and forms are accurately completed. HIS forms are used to determine eligibility of children for participation and rate of reimbursement.</p>	<ul style="list-style-type: none"> <li>• Improper use of parent signature date resulted in incorrect date of when meals were eligible for reimbursement in the program (1 site).</li> <li>• Parent signature date missing (at least 1 site).</li> <li>• Level of reimbursement incorrectly assigned (3 sites).</li> </ul>
<p><b>For-Profit Program</b> MDE ensures at least 25 percent of children at sites are eligible under federal regulations for free or reduced-price meals.</p>	<ul style="list-style-type: none"> <li>• Incorrect calculation of percentage of children eligible for free or reduced-price lunch, but site still eligible under corrected percentage (1 site).</li> </ul>

<sup>a</sup> A meal pattern includes the individual food items, portion sizes, and nutritional content of meals and snacks.

Source: Office of the Legislative Auditor, summary of Minnesota Department of Education documents.

In response to MDE’s findings and technical assistance, Feeding Our Future drafted a detailed corrective action plan that consisted primarily of (1) promising to update Feeding Our Future’s policies and procedures; (2) additional documentation supporting site claims and program-related procurements; and (3) retraining sponsor, site, and vendor staff, including, for some trainings, documentation of the staff who attended the training, the location of the training, and the date the training was conducted.

Federal CACFP regulations establish few specific requirements for MDE’s administrative review follow-up activities, but USDA guidance states that follow-up reviews may be conducted any time corrective action is required.<sup>60</sup> Guidance further states that the purpose of a follow-up review is to determine whether the sponsor has completely corrected review findings according to its approved corrective action plan. In addition, the guidance explains that for reviews that initially uncovered only minor findings, “if any of the initial findings still remain...the State agency should make a determination on whether additional corrective actions will suffice or whether to declare the sponsor seriously deficient.”<sup>61</sup> Guidance also recommends that follow-up reviews should be unannounced and should occur after the state agency accepts the sponsor’s corrective action plan. In addition, the guidance indicates that reviews can be conducted offsite with a “desk review,” or in some cases onsite, depending upon the need to directly observe that corrective action has been implemented.<sup>62</sup>

<sup>60</sup> 7 *CFR*, sec. 226.6(m) (2023); and U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 57. Federal regulations provide more specific requirements for MDE follow-up efforts when it finds deficiencies in sponsors’ decisions concerning children’s eligibility for free or reduced-price lunch (7 *CFR*, sec. 226.23(h) (2019)). Similarly, federal regulations require MDE to conduct follow-up if it has reason to believe that a sponsor or its principals were determined ineligible to participate in a non-CACFP publicly funded program due to violations of program requirements (7 *CFR*, secs. 226.6(b)(1)(xiii)(C) and (b)(2)(iii)(C) (2023)).

<sup>61</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies: A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 57.

<sup>62</sup> *Ibid.*



MDE staff indicated that all of its findings that required corrective action from its 2018 administrative review of Feeding Our Future warranted follow-up. While many of MDE's findings could be reviewed offsite, others (such as findings related to attendance verification, meal service, and food preparation recordkeeping) would be best reviewed onsite as meal service or food preparation was occurring. As a result, we expected to see evidence of both follow-up desk reviews and unannounced onsite observations to ensure that Feeding Our Future staff, and the staff at its sponsored sites, were fully implementing the organization's updated procedures and applying the training they received as part of Feeding Our Future's corrective action plan.

Contrary to federal guidance and the department's statement to Feeding Our Future, MDE did not conduct any follow-up review activity of the organization beyond asking questions and providing technical assistance and training.<sup>63</sup> When we asked why it did not conduct a follow-up review to ensure that Feeding Our Future's corrective action plan was being fully implemented, MDE told us that "The follow-up review was scheduled for 2020 but did not happen due to the COVID-19 pandemic...we could have done a desk review but wanted to do the full review so we paused until the pandemic was over."<sup>64</sup>

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### **MDE started, but did not complete, an administrative review of Feeding Our Future's SFSP operations.**

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Similar to CACFP, federal regulations require state agencies to conduct a review of SFSP sponsors at least once during their first year of operation.<sup>65</sup> Accordingly, after MDE signed its SFSP program agreement with Feeding Our Future in June 2020, MDE initiated an SFSP administrative review in August 2020.<sup>66</sup> In October 2020, MDE conducted virtual site visits using the live video functionality of Feeding Our Future's executive director's phone. However, MDE paused the administrative review in October 2020 because, according to MDE staff, their virtual site visits "were not working."<sup>67</sup>

We question MDE's decision to pause its SFSP administrative review for several reasons. First, MDE had not conducted the follow-up reviews necessary to ensure that Feeding Our Future had corrected the deficiencies the department identified in its December 2018 CACFP administrative review. Second, MDE's June 2020 SFSP preapproval visit of Feeding Our Future resulted in a considerable number of "action items." Third, in the four months that Feeding Our Future's SFSP program had been in operation, it had already claimed large numbers of SFSP meals and snacks. Specifically, from June 2020

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<sup>63</sup> In February 2019, MDE told Feeding Our Future that it would conduct a follow-up review within the next six to nine months (August to November 2019).

<sup>64</sup> Minnesota Department of Education, written response to Office of the Legislative Auditor questions, June 2, 2023. MDE clarified that visits of Feeding Our Future and its CACFP sites were scheduled for October through December 2020. As we discuss in more detail in the next section, MDE chose not to conduct these visits; applicable waivers in effect at the time did not prohibit MDE from conducting site visits.

<sup>65</sup> 7 *CFR*, sec. 225.7(e)(4)(i) (2023).

<sup>66</sup> As stated above, MDE conducted announced virtual site visits of two Feeding Our Future sites in August 2020. Neither of these visits were part of MDE's paused SFSP administrative review.

<sup>67</sup> Minnesota Department of Education, written response to Office of the Legislative Auditor questions, February 24, 2023.

through September 2020, Feeding Our Future claimed roughly 2.4 million SFSP meals and snacks worth nearly \$6.6 million in reimbursements.<sup>68</sup>

Even if virtual site visits were proving difficult, we think MDE should have identified other ways to review Feeding Our Future's SFSP operations, including conducting socially distanced observations of Feeding Our Future sites from site parking lots or conducting desk reviews of Feeding Our Future's meal claims and food production records.<sup>69</sup> It did not do so.

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## RECOMMENDATION

### **MDE should conduct follow-up reviews, as needed, to ensure sponsors fully implement corrective action plans that result from administrative reviews.**

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While we question MDE's decisions to delay its follow-up CACFP review and pause its SFSP administrative review in the fall of 2020, we recognize that the COVID-19 pandemic and related waivers affected its decision making. During at least some of the time MDE was delaying its follow-up CACFP review, USDA had waived the requirement that MDE conduct administrative reviews of sponsors with more than 100 sites at least once every two years. From March 2020 through 2021, USDA also permitted MDE to conduct offsite monitoring of CACFP and SFSP sponsors because of the COVID-19 pandemic. Further, regulations allowed MDE one year, or until June 2021, to conduct a first-year administrative review of the organization's SFSP operations. However, MDE no longer had to meet this one-year deadline when USDA waived this requirement for SFSP in February 2021.

As we discuss in the next section, while USDA's monitoring waivers *permitted* MDE to engage in less monitoring overall, they did not *prohibit* MDE from conducting administrative reviews or onsite monitoring visits of Feeding Our Future. In fact, in its request for a Minnesota-specific monitoring waiver, MDE promised to do the opposite: conduct targeted monitoring of sponsors, like Feeding Our Future, who claimed an unusually high or implausible number of meals and snacks or those at high risk of meal claim inaccuracies or discrepancies.<sup>70</sup>

For high-risk sponsors such as Feeding Our Future, MDE should, at a minimum, collect additional documentation, interview staff at sites and the sponsor, and follow federal guidance by conducting virtual or in-person site visits to confirm that the sponsor has implemented the changes it pledged to make in its corrective action plan. If a corrective action plan is complex or includes many elements, we think MDE could take a risk-based approach to verifying the sponsor's implementation of its corrective action plan. In doing

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<sup>68</sup> This was in addition to the nearly 795,000 CACFP meals and snacks worth roughly \$1.6 million in reimbursements Feeding Our Future claimed to have served during the same period.

<sup>69</sup> During this period, some of Feeding Our Future's sites were distributing bundled meals to students and their parents or guardians for consumption offsite. This means that meal service may have occurred outside where it could have been observed by socially distanced MDE staff.

<sup>70</sup> For more information on USDA's Minnesota-specific monitoring waiver, see Acting Director, Program Monitoring and Operational Support Division, Child Nutrition Programs, U.S. Department of Agriculture, letter to Director of Nutrition, Minnesota Department of Education, *MDE Oversight Waiver Response Final*, February 2, 2021.

so, MDE should consider both the risks posed by the sponsor involved and the risks to program integrity that the elements of a corrective action plan seek to address.

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## Impact of Federal COVID-19 Waivers on Oversight

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The U.S. Department of Health and Human Services declared COVID-19 a public health emergency on January 31, 2020, and on March 11, 2020, the World Health Organization declared COVID-19 a pandemic. On March 13, 2020, Minnesota's Governor issued an executive order declaring a peacetime emergency, and on March 15, 2020, the Governor issued an executive order closing all Minnesota public schools from March 18 to March 27, 2020.<sup>71</sup> Public schools remained closed to in-person learning through the rest of the 2019-2020 school year, opting instead for distance-learning options. The majority of Minnesota public schools operated a virtual or hybrid learning model at the beginning of the 2020-2021 school year.

Also in March 2020, the Governor directed Minnesotans to stay home and ordered the closure of nonessential businesses in an effort to slow the spread of COVID-19 in the state.<sup>72</sup> The resulting economic disruption and recession led Minnesota's unemployment rate to increase from 4 to 11 percent and labor market participation to drop 2 percent from its pre-pandemic level. As household incomes dropped, food insecurity increased. This food insecurity was exacerbated for children, as school closures denied them access to a variety of school nutrition programs that may have previously provided them with free or reduced-price meals and snacks.

In addition to school closures, public health guidance discouraged nonessential in-person interaction and congregate activity. This made meal preparation and distribution more complex at CACFP and SFSP sites, while also raising the health risks of in-person monitoring of sites for MDE and sponsor staff. In response to these and other challenges, USDA looked for ways to provide states, sponsors, and sites flexibility in how they administered CACFP and SFSP.

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### **In response to the COVID-19 pandemic, the federal government issued waivers that temporarily modified eligibility and oversight requirements for CACFP and SFSP.**

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From March 2020 to July 2022, USDA issued COVID-19 waivers to suspend federal requirements for CACFP and SFSP.<sup>73</sup> Some waivers were nationwide and automatically applied to state agencies or sponsors that elected to utilize them. Other waivers were state

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<sup>71</sup> State of Minnesota Emergency Executive Order 20-01, "Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19," March 13, 2020; and State of Minnesota Emergency Executive Order 20-02, "Authorizing and Directing the Commissioner of Education to Temporarily Close Schools to Plan for a Safe Educational Environment," March 15, 2020.

<sup>72</sup> State of Minnesota Emergency Executive Order 20-04, "Providing for Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation," March 16, 2020; and State of Minnesota Emergency Executive Order 20-20, "Directing Minnesotans to Stay at Home," March 25, 2020.

<sup>73</sup> Title II of the Families First Coronavirus Response Act of 2020 (Public Law 116-127), also known as the "COVID-19 Child Nutrition Response Act," gave USDA the authority to issue pandemic-related waivers.

specific and had to be requested by state agencies. Similarly, some waivers required sponsors to request approval from state agencies before they could be implemented.

Generally, these waivers provided flexibility for CACFP and SFSP program operations; modified oversight of the programs; and gave sites greater flexibility in terms of how, when, and to whom they served food. The intent of these waivers was to maintain program integrity and to provide meals and snacks to eligible participants, while also supporting social distancing requirements to reduce the exposure to COVID-19.

There were six general categories of pandemic-related waivers used in Minnesota for CACFP and SFSP:

- **Meal service waivers** altered how sites were allowed to serve meals and snacks. Taken together, these waivers allowed sites to “bundle” meals and snacks and distribute several food items to children or their parents or guardians at a single point in time. (Prior to the pandemic, sites were required to serve meals and snacks to children in a congregate setting at specified times.) Pandemic-related meal service waivers were in effect from March 2020 to September 2022.
- **State agency onsite monitoring waivers** allowed MDE to conduct some monitoring activities offsite to support social distancing health guidance. MDE was not prohibited from conducting onsite visits, but rather was encouraged to conduct as much monitoring as it could offsite to ensure the integrity of the program. These waivers were in effect from March 2020 to June 2023.
- **Administrative review waivers** gave state agencies flexibility in the number and frequency of administrative reviews of sponsors and their sites. For example, in April 2020, USDA issued a waiver that removed the requirement that agencies annually review at least one-third of all CACFP sponsors, with at least 15 percent of those reviews being unannounced. Additionally, it waived the requirement that independent CACFP centers and sponsoring organizations with 1 to 100 sites be reviewed every three years, and those with over 100 sites be reviewed every two years. These types of waivers were in effect from April 2020 to September 2022.
- **Area eligibility waivers** allowed sites to be located in places that, prior to the waivers, did not qualify for CACFP and SFSP based on the income of households in the given area. Additionally, some waivers also allowed some SFSP sites to operate based on their location only and not on the income of the individuals receiving food. One key Minnesota-specific waiver, issued by USDA in April 2020, stated that SFSP sponsors in good standing were able to operate sites not located in “areas in which poor economic conditions exists,” meaning a site could be located anywhere in the state as long as MDE approved it. These pandemic-related area eligibility waivers were in effect from April 2020 through April 2023.

- **Application approval waivers** gave state agencies flexibility in SFSP sponsor application deadlines. These waivers allowed MDE 45 days, instead of 30 days, to approve or deny applications. These waivers were in effect from June 2020 through July 2020, and again from February 2021 through July 2021.
- **Sponsor onsite monitoring waivers** temporarily suspended some requirements associated with sponsors' periodic in-person visits and reviews of sites. These waivers were in effect from March 2020 through June 2023.

While the waivers generally modified requirements over one continuous period of time, MDE implemented nearly 100 different waivers during the COVID-19 pandemic. Each individual waiver had an effective date and an expiration date, and many were extended several times due to the length of time in which the COVID-19 pandemic affected the nation. Waivers sometimes changed slightly when they were extended. For example, an initial waiver that removed nutritional requirements of food items that could be served by sites, issued on March 25, 2020, applied to both CACFP and SFSP. However, the fourth and fifth extensions of this waiver, issued on June 25, 2020, and July 30, 2020, respectively, created separate waivers for CACFP and SFSP.

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**Some waivers that facilitated meal-bundling required state agencies to have a plan to ensure sites maintained program integrity, but MDE had no such plan, and its oversight was inadequate.**

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Waivers allowing parents or guardians to pick up meals on behalf of children directed state agencies to have a plan for ensuring that program operators were able to maintain accountability and program integrity. Specifically, USDA directed state agencies to ensure that sponsors and sites had processes so that children did not receive duplicate meals and only parents or guardians of eligible children received meals.<sup>74</sup>

Despite the USDA directive, MDE never produced a formal written plan outlining how it would ensure that program operators had taken adequate steps to maintain accountability and program integrity when distributing meals to parents or guardians. MDE officials told us the department outlined these plans in an annual state plan and a plan developed in response to pandemic-related waivers. However, neither plan directly addressed meal bundling. The annual state plan, submitted to and approved by USDA for program year 2021, generally explained MDE's program execution, overall monitoring approach, and related budget plans for the upcoming program year.<sup>75</sup> The pandemic plan addressed MDE's procedures to identify, assess, control, and monitor risks posed to the program as a result of the USDA issued waivers, but it did not address the meal-bundling waivers explicitly.

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<sup>74</sup> See, for example, U.S. Department of Agriculture, Food and Nutrition Service, COVID-19: Child Nutrition Response #5, *Nationwide Waiver to Allow Parents and Guardians to Pick Up Meals for Children*, March 25, 2020.

<sup>75</sup> Minnesota Department of Education, *Summer Food Service Program (SFSP) Management and Administrative Plan* (St. Paul, February 2021). This plan was required by 7 CFR, sec. 225.4(a) (2021).

MDE officials stated its meal-bundling compliance work was limited to supplying guidance and providing technical assistance to their sponsors. Additionally, MDE stated that it regularly reached out to Feeding Our Future to voice concerns related to its large number of site applications and how program integrity could be maintained as the number of its sites grew. However, an MDE official indicated that despite the department's efforts, it was difficult to determine compliance, and MDE often had to rely on a sponsor's truthfulness.

Further, MDE did not review a written plan from Feeding Our Future about how its sites would avoid duplicate meals and only distribute meals to the parents or guardians of eligible children. An MDE official stated that sponsors were not required to provide this kind of plan to MDE. Additionally, MDE did not request the records necessary to validate even a sample of Feeding Our Future sites' bundled meal claims—such as meal preparation records, invoices, attendance, or menus—for one year after USDA issued the first pandemic-related waiver.<sup>76</sup> During the fall of 2020, Feeding Our Future sites were claiming to serve, on average, roughly 2.9 million meals and snacks a month, but MDE did not initiate a meal validation process for Feeding Our Future until the end of March 2021.<sup>77</sup>

Despite having the authority to do so under federal regulations, MDE did not provide us documentation showing that it visited any of Feeding Our Future's sites in person during the COVID-19 pandemic.<sup>78</sup> MDE could have used these visits to confirm the plausibility of bundled-meal counts or to check that site staff were taking steps to prevent meal duplication or the distribution of meals to the parents or guardians of ineligible children. USDA waivers never prohibited MDE from conducting onsite monitoring, but rather encouraged state agencies to use offsite monitoring to the maximum extent possible to ensure program integrity.

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**Waivers that modified monitoring requirements for state agencies and sponsors encouraged offsite reviews and alternative forms of oversight, but MDE's offsite monitoring of Feeding Our Future was limited.**

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As we described above, beginning in March 2020, USDA waived requirements that *state agencies* conduct onsite monitoring visits of CACFP and SFSP sponsors (and a percentage of their sites). Other nationwide and state-specific waivers permitted state agencies to delay or skip reviews and visits of sponsors and their sites. At the same time, USDA waived requirements that CACFP and SFSP *sponsors* conduct site reviews onsite. Other nationwide and state-specific waivers permitted sponsors to skip required visits and reviews of their sites. Further, some monitoring-related waivers allowed reviews of CACFP sites to be announced rather than unannounced and to not include observation of meal service.

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<sup>76</sup> Federal regulations required Feeding Our Future to make records available when requested by MDE, USDA, and others (7 *CFR*, secs. 225.15(c)(1) and 226.10(d) (2021)).

<sup>77</sup> We discuss MDE's review of Feeding Our Future's meal validation documents in Chapter 5.

<sup>78</sup> 7 *CFR*, secs. 225.7(d); 225.12(f); and 226.6(b)(4)(iii) (2020).

Even though many monitoring requirements were waived during the COVID-19 pandemic, USDA still encouraged states to have a system in place to continue some kind of oversight and monitoring. Waivers related to state agency onsite monitoring stated that “State agencies should, to the maximum extent practicable, continue monitoring activities of Program operations offsite (e.g., through a desk audit).”<sup>79</sup>

In a January 2021 waiver request to pause some monitoring activities for CACFP and SFSP, MDE stated that it would implement a program integrity and risk management plan that identified “high risk [Child Nutrition Program] sponsors needing additional support via targeted technical assistance, training, and/or reviews.”<sup>80</sup> As part of its plan, which USDA approved in February 2021, MDE said it would conduct claims trend analysis to identify sponsors for red-flags; use data to determine if any sponsors were at high risk for claiming inaccuracies; collect claim validation data for desk audits; contact sponsors about questionable claims; and, if needed and possible, conduct onsite visits. The boxes below outline MDE’s key monitoring and oversight activities before and after its implementation of pandemic-related waivers.

MDE’s Monitoring Activities <u>Before</u> COVID-19 Pandemic-Related Waivers	MDE’s Monitoring Activities <u>After</u> COVID-19 Pandemic-Related Waivers
<p>Monitoring activities were primarily conducted onsite. During onsite reviews, MDE:</p> <ul style="list-style-type: none"> <li>• Observed meal and snack service and meal and snack counting, and reviewed associated records.</li> <li>• Reviewed documentation, such as approved household income statements and sponsors’ processes to submit claims.</li> </ul> <p>The offsite portion of reviews was limited, if conducted at all, and included only some prereview of documentation sponsors provided.</p>	<p>Monitoring activities were primarily conducted offsite to support social distancing requirements. During these reviews, MDE:</p> <ul style="list-style-type: none"> <li>• Observed meal and snack service and meal and snack counting virtually (typically through a video call), but the observation method largely depended on the site’s technical capabilities.</li> <li>• Sponsors were required to complete and submit forms and requested documentation to MDE via electronic means.</li> </ul> <p>USDA permitted MDE to skip formal onsite reviews of sponsors throughout most of the duration of the pandemic.</p>

We asked MDE officials about the extent to which Feeding Our Future was included in the implementation of its program integrity and risk management plan for monitoring. An MDE official confirmed that the department evaluated the risk of Feeding Our Future by (1) analyzing trends in Feeding Our Future’s claims and payment data, (2) tracking the growth in its sites, and (3) tracking errors and other issues in its site applications. MDE indicated that the department used this information to identify risks posed by specific sites, and as justification for finding Feeding Our Future “seriously deficient” in 2021.

<sup>79</sup> See, for example, U.S. Department of Agriculture, Food and Nutrition Service, COVID-19: Child Nutrition Response #11, *Nationwide Waiver of Onsite Monitoring Requirements for State Agencies in the Summer Food Service Program*, March 27, 2020.

<sup>80</sup> Director of Nutrition, Health and Youth Development Division, Minnesota Department of Education, letter to U.S. Department of Agriculture, *Child Nutrition Program State Waiver Request Template*, January 19, 2021.

Despite the significant growth in Feeding Our Future's meal claims (as we presented in Chapter 2), Feeding Our Future's meal claims were not subject to a desk audit until the end of March 2021.<sup>81</sup> MDE had not previously conducted a desk audit of Feeding Our Future, despite numerous findings in Feeding Our Future's first administrative review in December 2018.

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## RECOMMENDATION

### **MDE should place a greater emphasis on program integrity and risk-based monitoring if oversight requirements are waived again in the future.**

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Understandably, MDE placed an emphasis on providing food to hungry children and eligible adults throughout the duration of the COVID-19 pandemic. This prioritization, however commendable, also put the programs' integrity at risk. We think that the flexibility the waivers gave MDE regarding monitoring should have made focusing on high-risk sponsors, like Feeding Our Future, easier, not harder. MDE could have freed up staff resources working with lower-risk sponsors to instead focus on one of its largest sponsors, Feeding Our Future. It was MDE's choices that made monitoring waivers a source of reduced oversight, not the waivers themselves.

In the future, if oversight requirements are waived again, MDE should place priority on making appropriate adaptations to its oversight activities to ensure the integrity of CACFP and SFSP. This could include focusing on sponsors or sites that exhibit warning signs, such as large increases in sites, meals, or reimbursements; and ensuring that any adaptations MDE creates ensure sponsors and sites continue to adhere to program regulations and requirements.

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<sup>81</sup> As we discuss further in Chapter 5, we identified a number of issues in the files MDE reviewed for this desk audit. Generally, MDE failed to consistently request missing or incomplete documentation it would have needed to verify Feeding Our Future's meal claims. Additionally, MDE did not question Feeding Our Future regarding documentation that had indications of potentially fraudulent activity.



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# Chapter 4: Complaint Investigations

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Between June 2018 and December 2021, the Minnesota Department of Education (MDE) received at least 30 complaints involving Feeding Our Future or its sites.<sup>1</sup> The complaints included allegations that Feeding Our Future used unethical or inappropriate methods to recruit sites; operated sites at locations without the property owners' permission, and at those locations, ran a messy and haphazard food distribution process; and demanded kickback payments from vendors to serve food at its sites.

By law, state agencies must “promptly investigate complaints received or irregularities noted in connection with” the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) and “take appropriate action to correct any irregularities.”<sup>2</sup>

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**Many of MDE’s complaint investigation procedures and practices were inappropriate or of limited usefulness, particularly in the context of the alleged fraud.**

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Generally, when MDE received a complaint about Feeding Our Future or its sites, MDE’s first step was to share the complaint with Feeding Our Future.<sup>3</sup> When determining whether complaints were substantiated, MDE often relied on the statements made by Feeding Our Future’s executive director and inconsistently took steps to verify the truthfulness of their statements. As we discuss in this chapter, this approach was flawed for several reasons. Most importantly, MDE had reason to doubt Feeding Our Future’s trustworthiness as a sponsor, yet MDE continued to ask Feeding Our Future to resolve complaints about itself.



## Key Events in the Timeline: Complaints

**June 2018** – MDE received the first of many complaints alleging poor management practices at Feeding Our Future. MDE received 16 additional such complaints between June 2018 and December 2021.

**July 2018** – MDE received the first of many complaints alleging unethical site recruitment practices by Feeding Our Future. MDE received seven additional such complaints between July 2018 and January 2021.

**June 2019** – MDE received the first of two complaints that alleged Feeding Our Future required kickbacks from vendors. MDE received one additional complaint regarding kickbacks in August 2021.

**June 2019** – MDE received the first of several complaints alleging improper program implementation at Feeding Our Future or its sites. MDE received three additional such complaints between June 2019 and August 2021.

*See Appendix A for more information.*

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<sup>1</sup> As we show in Appendix A, Feeding Our Future became a CACFP sponsor in July 2018, an SFSP sponsor in June 2020, and was terminated as a sponsor from both programs in January 2022. Appendix A provides a brief description of each of the complaints MDE received about Feeding Our Future, along with the date MDE received each complaint.

<sup>2</sup> 7 *CFR*, secs. 225.11(b) and 226.6(n) (2023).

<sup>3</sup> According to MDE’s complaint investigation procedures, this practice allows sponsors the opportunity to investigate what occurred, provide a response, and/or resolve any disagreements with the complainant.

More broadly, despite repeated warnings by the U.S. Department of Agriculture’s (USDA’s) Office of Inspector General of the risks of fraud, waste, and abuse in federal nutrition programs, MDE was not prepared to investigate these issues in CACFP or SFSP.<sup>4</sup> MDE assigned investigative duties to child-nutrition program staff, rather than trained investigators. And, MDE relied on limited-scope USDA reviews of MDE’s complaint investigation procedures to inform whether and how it investigated complaints about Feeding Our Future.<sup>5</sup>

Finally, MDE officials told us that the department met the federal requirement to inform USDA of “any suspected fraud or criminal abuse... which would result in a loss or misuse of Federal funds” in SFSP when it shared its concerns about Feeding Our Future with USDA’s Office of Inspector General in October or November 2020.<sup>6</sup> However, informing USDA of its concerns did not absolve MDE of its legal responsibility to (1) “promptly investigate” program-related complaints and irregularities, and (2) “take appropriate action to correct any irregularities” in CACFP and SFSP.<sup>7</sup> In the end, MDE missed opportunities to investigate allegations about Feeding Our Future’s administration of federal nutrition programs and take timely action to hold the organization accountable to program requirements, when warranted.

In this chapter, we first discuss limitations with MDE’s written complaint investigation procedures. Then, we highlight shortcomings in MDE’s investigation practices. We conclude the chapter with recommendations to MDE.

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<sup>4</sup> USDA’s Office of Inspector General considers both CACFP and SFSP to be at “high risk” for improper payments, including duplicate payments, payments to ineligible recipients or for ineligible goods or services, payments not authorized by law, and payments for a good or service not received (U.S. Department of Agriculture, Office of Inspector General, *USDA’s Compliance with Improper Payment Requirements for Fiscal Year 2021*, Audit Report 500024-0002-24 (Washington, DC, June 2022), 1-2, 10). See also: U.S. Department of Agriculture, Office of Inspector General, *Review of Management Controls for the Child and Adult Care Food Program*, Audit Report 27601-0012-SF (Washington, DC, November 2011), 1-3, 25-29; U.S. Department of Agriculture, Office of Inspector General, *New York’s Controls Over Summer Food Service Program*, Audit Report 27004 0001-23 (Washington, DC, September 2018), 3-7, 15-17, 27-30; and U.S. Department of Agriculture, Office of Inspector General, *Summer Food Service Program in Texas—Sponsor Costs*, Audit Report 27004-0003-21 (Washington, DC, March 2019), 4-7, 12-15, 30-36.

<sup>5</sup> USDA evaluated MDE’s management of SFSP and CACFP in 2018 and 2019, respectively, and neither evaluation resulted in findings of noncompliance related to MDE’s complaint investigation procedures. However, USDA’s guidance for CACFP management evaluations directs USDA evaluators to “review a sample of *one or two complaints* to determine if the process is being followed” (emphasis added; U.S. Department of Agriculture, Food and Nutrition Service, *Guidance, Management Evaluation of State Agency Operations, Child and Adult Care Food Program* (Washington, DC, Fiscal Year 2019), 82). While the scope of the SFSP management evaluation is broader with regard to complaints, Feeding Our Future was not participating in SFSP during the period covered by USDA’s 2018 evaluation of MDE’s management of SFSP.

<sup>6</sup> 7 *CFR*, sec. 225.11(b) (2020). Federal regulations did not include a similar requirement for CACFP, but both CACFP and SFSP regulations stated that USDA “may make investigations at the request of the State agency” (7 *CFR*, secs. 225.11(b) and 226.6(n) (2020)). The exact date MDE shared its concerns with USDA’s Office of Inspector General is unclear.

<sup>7</sup> 7 *CFR*, secs. 225.11(b) and 226.6(n) (2020).

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## Complaint Investigation Procedures

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Clear and detailed complaint investigation procedures are important for several reasons. They promote consistency in decision-making processes, establish clear expectations for individuals' work, and create standards to which that work can be held accountable. Further, federal guidance for CACFP directs MDE to have complaint investigation procedures that are written, accommodate verbal or written complaints, ensure prompt investigations, and document evidence and "actions taken" in complaint files.<sup>8</sup>

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**While MDE had written complaint investigation procedures, their limited scope and failure to address important issues undermined their ability to promote good investigative practices.**

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MDE's procedures for addressing complaints involving CACFP and SFSP sponsors and sites lacked detail, assumed parties were acting in good faith, and did not account for common types of complaints.

Throughout most of the period Feeding Our Future was a sponsor for CACFP and SFSP, MDE's written complaint investigation procedures did not include detailed information to guide the processes of complaint intake, investigation, and documentation.<sup>9</sup> For example, MDE's complaint investigation procedures did not:

- Establish who was responsible for accepting complaints, the methods by which complaints could be received (such as by phone, e-mail, or U.S. mail), and how complaints should be tracked or recorded.<sup>10</sup>
- Include guidance for determining which complaints should be investigated and which could be deferred. Given limited resources and variation in the seriousness of allegations, organizations with investigatory duties typically develop a system for prioritizing which complaints to investigate.
- Provide sufficient direction on the investigatory steps MDE staff should take to confirm the veracity of allegations or corroborate the responses given by complaint subjects. While MDE's procedures referenced standard investigative

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<sup>8</sup> U.S. Department of Agriculture, Food and Nutrition Service, *Monitoring Handbook for State Agencies, A Child and Adult Care Food Program Handbook* (Washington, DC, updated May 2014), 59.

<sup>9</sup> MDE updated its CACFP and SFSP complaint investigation procedures in October 2021. In addition to complaint investigation procedures, MDE submitted plans to the USDA in 2018, 2019, and 2021 that discussed its approach to complaint investigations. According to the plans, MDE said it aimed to (1) begin investigations within two business day to determine the validity of the complaint, (2) maintain a complaint log and document evidence and actions, and (3) have timelines for correcting deficiencies that depended upon the type and severity of deficiencies found. However, throughout most of the period Feeding Our Future was active, MDE's complaint investigation procedures did not incorporate these elements. For example, prior to October 2021, MDE's complaint investigation procedures did not instruct MDE staff to maintain a complaint log. Further, complaint investigation procedures, both before and after October 2021, do not discuss timelines for correcting deficiencies discovered during investigations.

<sup>10</sup> Beginning in October 2021, MDE's CACFP and SFSP complaint procedures provided brief instructions on how to document complaints received.

practices, such as site visits, witness interviews, and document collection, they did not provide a detailed explanation of when or how these practices should be conducted.

- Provide standards or guidance on recordkeeping, including how staff should document their investigations or what evidence should be retained to support their conclusions.<sup>11</sup> By law, MDE must maintain evidence of its investigations and actions taken to correct program irregularities.<sup>12</sup> A lack of recordkeeping standards could make it more difficult for investigators to draw upon previous evidence and findings when investigating sponsors who are the subject of multiple complaints.

In addition to lacking detail, MDE’s complaint investigation procedures emphasized the role of complainants and the subjects of the complaints in resolving complaints on their own. For example, prior to October 2021, the first step of MDE’s CACFP and SFSP complaint investigation procedures directed MDE or the complainant to share the content of the complaint with the subject of the complaint, so that the subject of the complaint could investigate their own conduct and/or attempt to resolve the complaint without further MDE investigation. Only after the parties to the complaint had failed to resolve the issue did the procedures prompt MDE to accept a formal or written version of the complaint that included “all details, particularly names of witnesses” to “collaborate [*sic*] the facts.”<sup>13</sup> Once MDE received a formal complaint, procedures again directed MDE to give the subject of the complaint an opportunity to respond.

While these procedures may have been appropriate when both the subject of the complaint and the complainant were credible and acting in good faith, such an approach would be inappropriate once MDE suspected that one or both parties lacked credibility or were acting in bad faith. MDE’s complaint investigation procedures provided no guidance to staff for situations in which they doubted the credibility of complainants, complaint subjects, or witnesses. In these instances, a more effective approach would be for MDE to engage in at least some independent fact-finding before further engaging with complainants and complaint subjects.<sup>14</sup>

Finally, MDE’s complaint investigation procedures did not provide guidance about how to investigate different types of complaints. The CACFP procedure pertained only to complaints about site recruitment and did not provide any guidance about whether or how to investigate other types of complaints, such as complaints about meal service,

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<sup>11</sup> After October 2021, one of MDE’s two public complaint procedures stated “Upon receipt of complaint, complaint is logged on SFSP Complaint Log and document facts are collected and recorded” but provided no further directions (Minnesota Department of Education, Nutrition, Health and Youth Development, *Complaint Procedure for Summer Food Service Program*, revised October 2021).

<sup>12</sup> 7 *CFR*, secs. 225.11(b) and 226.6(n) (2023).

<sup>13</sup> Minnesota Department of Education, *Child and Adult Care Food Program Recruitment Complaint Procedure*, created December 28, 2010, revised February 26, 2019; and Minnesota Department of Education, Food and Nutrition Service, *Complaint Procedure for Summer Food Service Program*, approved May 1, 2015.

<sup>14</sup> In contrast to the SFSP policy in effect prior to October 2021, the first steps in MDE’s updated SFSP policy direct MDE staff to document that “facts are collected and recorded” and then to begin “looking into the facts and evidence surrounding the complaint” (Minnesota Department of Education, Nutrition, Health and Youth Development, *Complaint Procedures for Summer Food Service Program*, revised October 2021).

food preparation, or misuse of program funds.<sup>15</sup> In contrast, MDE’s SFSP procedures made no mention of improper recruitment. Instead, the procedures provided general directions that were not specific to any type of complaint.

## Investigations of Complaints Involving Feeding Our Future

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Given its limited resources, it is reasonable for MDE to defer investigations in situations in which complaints are vague, evidence is difficult to obtain, or the complainant or witnesses are uncooperative. However, it is also reasonable to expect MDE to investigate repeated complaints alleging fraud or other serious concerns. As we discuss in this section, MDE did not always conduct independent investigations, and when it did, MDE’s investigations were inadequate.

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### **MDE did not investigate some complaints about Feeding Our Future, despite their frequency or seriousness.**

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Based on our review of MDE documents, MDE contacted Feeding Our Future or its sites in response to many of the complaints it received, but often took no other investigative steps. It was not always clear why MDE determined that some complaints could be addressed with few or no investigative steps, while others deserved a full investigation.

In some cases, MDE placed conditions on what types of complaints regarding Feeding Our Future it would accept or demanded that complainants provide further evidence before it would investigate, even when the complaint involved program irregularities. For example, a June 2018 complaint alleged that Feeding Our Future’s executive director had improperly, through acts of theft and forgery, taken control of the organization from the other founding members. MDE responded to the complainant that they should not provide further information to MDE about Feeding Our Future unless “there is a conviction for any business related offense; or the organization is no longer in good standing with the IRS....”<sup>16</sup>

MDE officials told us that the department did not investigate this allegation because it (1) notified law enforcement of the complaint and was told that no criminal investigation was forthcoming, and (2) did not view the allegation as a “program irregularity” that it would be required to investigate under federal law.<sup>17</sup> However, the subject of the complaint represented themselves as the board chair and president of Feeding Our Future, and given this role, they would be responsible for overseeing how the organization spent federal funds. They would also be responsible for addressing

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<sup>15</sup> According to USDA guidance and MDE policy, sponsors should not recruit sites that are already participating in CACFP under another sponsor. MDE’s policy indicates that inappropriate recruitment practices include encouraging already sponsored sites to switch sponsors, making negative comments about other sponsors, or offering money or other incentives to sites to become sponsored or to switch sponsors. According to MDE’s policy, appropriate practices include identifying sites that are not already sponsored and then providing the nonsponsored sites information about the benefits of CACFP.

<sup>16</sup> CACFP and SFSP Supervisor, Minnesota Department of Education, e-mail to complainant, June 26, 2018.

<sup>17</sup> 7 *CFR*, sec. 226.6(n) (2018).

any deficiencies in organization's operations. We find it difficult to understand why MDE did not consider an allegation that an individual improperly assumed key management responsibilities of a sponsoring organization to be a "program irregularity" worthy of investigation.

On other occasions, MDE did not initiate an investigation, even after its initial follow-up with complainants revealed program irregularities. For example, in May 2021, an SFSP site contacted MDE to express concern that it would not be able to continue under Feeding Our Future's sponsorship. On the same day, a second SFSP site contacted MDE and claimed that it had not received a monthly reimbursement check from Feeding Our Future. During conversations with the two complainants, MDE discovered (1) the first complainant claimed that they had never discussed CACFP with Feeding Our Future, but the site had been an approved CACFP site for two program years; (2) the second complainant did not know it had a pending CACFP site application; and (3) the second complainant was operating at a location that differed from the address listed in MDE systems.

As we discussed in Chapter 1, as these sites' sponsor, Feeding Our Future was responsible for submitting program applications on their behalf, training site staff to meet applicable program regulations, and maintaining records that support the sites' meal claims and demonstrate the sites' compliance with law.<sup>18</sup> At a minimum, the irregularities MDE identified should have led it to review documents it had, or could have obtained, for misrepresentations, inaccuracies, and completeness. For example, for the site that was approved for both CACFP and SFSP, MDE could have reviewed previously approved meal claims and documentation of Feeding Our Future's monitoring of the site to ensure that the site claimed meals and snacks for the correct program and followed the correct set of program regulations. Other than speaking with representatives of the sites, MDE took no additional investigative steps to ensure program compliance. The U.S. Department of Justice would later charge the first complainant in the alleged fraud scheme.

As a final example, four months after denying a for-profit restaurant's SFSP site application renewal, MDE received a complaint that food distribution was continuing to occur at the site. Specifically, the owner of the property reported to MDE that they were "not comfortable" with Feeding Our Future's food distribution activity on their property and alleged that they had received complaints about Feeding Our Future's meal service, including that staff were "dumping milk outside."<sup>19</sup> The complainant also stated that they attempted to resolve the dispute with Feeding Our Future, but Feeding Our Future's executive director did not listen to their complaint.

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<sup>18</sup> Federal regulations and program agreements between MDE and Feeding Our Future specify the records that sponsors should maintain, as well as MDE's authority to access those records (7 *CFR*, secs. 225.6(i)(13) and (i)(14); 225.15(c)(1); 226.6(b)(4)(iii); 226.10(d); and 226.15(e) (2023); Minnesota Department of Education and Feeding Our Future, *Child and Adult Care Food Program Agreement*, ED-02409-04E, effective July, 27, 2018; and Minnesota Department of Education and Feeding Our Future, *Summer Food Service Program Agreement for Private Non-Profit or Public Non-School Organization*, ED-02372-04E, effective June 30, 2020).

<sup>19</sup> Complainant, e-mail to Business Operations Support Services and CACFP and SFSP Supervisors, Minnesota Department of Education, "[Address]," October 27, 2021; and CACFP and SFSP Supervisor, Minnesota Department of Education, e-mail to complainant, "Child Nutrition Site Complaint," October 29, 2021.

In response, MDE told the complainant that the restaurant at the address in the complaint was a child nutrition program vendor and formerly a food distribution site. MDE then informed the complainant that MDE does not settle site disputes, and they should discuss issues with “the current lease or liability...with the leaseholder.”<sup>20</sup> According to MDE’s complaint log, the complaint was classified as a “dispute with property owner” that had “no resolution.”<sup>21</sup> The U.S. Department of Justice would later charge both the complainant and several individuals associated with the restaurant named in the complaint in the alleged fraud scheme.

When we asked MDE how it decided whether a complaint would receive a full investigation, MDE stated that it followed the complaint investigation procedures discussed above. As we stated previously, procedures did not establish criteria for determining when MDE staff should pursue a more extensive or formal investigation.

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### **MDE inappropriately asked Feeding Our Future to investigate complaints about itself.**

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Between July 2018 and January 2020, MDE received several complaints from a different child nutrition program sponsor alleging that Feeding Our Future was improperly recruiting its sites to transfer to Feeding Our Future’s sponsorship. Following MDE’s CACFP recruitment complaint procedure, MDE staff repeatedly assigned responsibility for initial fact-finding and dispute resolution to Feeding Our Future and the complainant.

For example, in September 2018, MDE requested that the complainant and Feeding Our Future “come to agreement on the actual facts related to the recruitment efforts” before the department would investigate.<sup>22</sup> The complainant informed MDE that they had a poor relationship with Feeding Our Future’s executive director and that the executive director would likely not speak with them. Despite this comment, at the end of its investigation, MDE again prompted the “two sponsors to resolve any conflicts directly with each other before preparing additional written complaints to MDE.”<sup>23</sup> In December 2019, when MDE received yet another recruitment-related complaint about Feeding Our Future from the same complainant, it echoed its previous guidance and encouraged Feeding Our Future to resolve the complaint with the complainant. According to Feeding Our Future, it received “a hostile response and unwillingness to have a productive conversation.”<sup>24</sup> This did not deter MDE from again repeating its

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<sup>20</sup> Business Operations Support Services Supervisor, Minnesota Department of Education, e-mail to complainant, “[Address],” October 27, 2021.

<sup>21</sup> “Complaint Log Start Oct 2021” (spreadsheet of child nutrition program complaints, Minnesota Department of Education, Roseville, October, 1 2021).

<sup>22</sup> CACFP and SFSP Supervisor, Minnesota Department of Education, e-mail to complainant, “Programs,” September 24, 2018.

<sup>23</sup> CACFP and SFSP Supervisor, Minnesota Department of Education, memorandum to executive directors of two sponsor organizations, *Minnesota Department of Education’s (MDE) response to the unethical recruitment complaints*, March 11, 2019.

<sup>24</sup> Executive Director, Feeding Our Future, letter to CACFP and SFSP Supervisor, Minnesota Department of Education, *Feeding Our Future’s response to recruitment complaints*, January 9, 2020.

preference that the two sponsors attempt to resolve their disputes before submitting additional complaints to MDE.

In a different case, in August 2021, MDE received conflicting reports of inappropriate or illegal behavior by Feeding Our Future, a site, and a vendor. Specifically:

- One of Feeding Our Future’s sites contacted MDE alleging that Feeding Our Future had not paid its food vendor. The vendor told MDE that Feeding Our Future had demanded a kickback, and when the vendor refused to pay, Feeding Our Future canceled the vendor’s contract in retaliation.
- According to the site, a new vendor Feeding Our Future assigned to the site delivered an insufficient number of meals, many of which violated food safety and dietary requirements.
- In separate correspondence with MDE, Feeding Our Future stated that it wanted to take administrative action against the site for submitting fraudulent claims, soliciting a kickback from its former vendor, and making a false complaint to MDE about its new vendor, among other serious allegations.

Rather than initiating a full independent investigation into Feeding Our Future or the site and vendors involved, MDE referred the site’s, and the site’s original vendor’s complaints, to Feeding Our Future “for resolution.”<sup>25</sup> MDE told Feeding Our Future that it expected the organization to “correct any program non-compliance, or discontinue operations at that site if site staff were uncooperative.”<sup>26</sup>

We are troubled by MDE’s decision to refer these complaints and alleged program irregularities back to Feeding Our Future for resolution rather than conducting its own independent investigation. In effect, MDE directed Feeding Our Future to investigate itself, including allegations of fraud at an SFSP site that should have been under the organization’s full control.<sup>27</sup> MDE made this decision roughly four months after sharing its fraud concerns about Feeding Our Future with the FBI. The U.S. Department of Justice later charged the executive director of the organization operating the site and the owners of both vendors named in the complaint in the alleged fraud scheme. The site operator pled guilty to criminal wire fraud charges on January 10, 2024.<sup>28</sup>

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<sup>25</sup> “Complaint Log Start Oct 2021” (spreadsheet of child nutrition program complaints, Minnesota Department of Education, Roseville, October, 1 2021).

<sup>26</sup> CACFP and SFSP Supervisor, Minnesota Department of Education, e-mail to Executive Director, Feeding Our Future, “Re: FW: Serious Deficiency – [Site],” August 30, 2021.

<sup>27</sup> By law, Feeding Our Future was required to “exercise[] full control and authority” as well as “accept[] final financial and administrative responsibility” for operations at all of its SFSP sites (7 *CFR*, sec. 225.14(c)(1) and (d)(6)(i) (2021)).

<sup>28</sup> In its September 7, 2021, letter to its sponsored site and MDE, Feeding Our Future stated that it conducted a site visit of the complainant’s new vendor on August 27, 2021. Feeding Our Future claimed that during the visit, the new vendor showed Feeding Our Future staff its processes and systems. According to a U.S. Department of Justice charging document, an individual suspected of participating in the alleged fraud created the new vendor “in or about August 2021... in part, to give the false impression that [the new vendor] was involved in the food business when, in reality, it was a shell company to further the scheme to defraud.” (U.S. District Court, District of Minnesota, Superseding Indictment, 22-CR-226 (NEB/TNL), 13, March 7, 2023.)



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**When MDE decided to investigate complaints about Feeding Our Future, the investigations were inadequate.**

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In the cases when MDE did conduct an investigation, MDE did not consistently interview available witnesses or review available documents to verify statements made by complainants, Feeding Our Future, or representatives of sponsored sites. Additionally, MDE did not visit Feeding Our Future sites named in complaints, even when the complaint was related to issues with meal service and food preparation—issues for which the most straightforward method of determining whether these complaints were credible would have been to visit the site.<sup>29</sup> Instead, in many of the complaint files we reviewed, MDE’s investigations seemed to rely, almost entirely, on statements made by complainants and Feeding Our Future’s executive director and legal counsel. MDE sometimes reviewed statements made by witnesses, but MDE often received witness statements indirectly from the complainant and/or Feeding Our Future, rather than directly from the witnesses themselves.

For example, in September 2018, January 2019, March 2019, and December 2019, MDE received at least three separate complaints from a sponsor alleging that Feeding Our Future was inappropriately recruiting its sites. The complainant repeatedly identified a specific Feeding Our Future staff person who they alleged was improperly recruiting its sites and said the improper recruiting was taking place at meetings of a specific child-care provider association. In its response to the complaints, Feeding Our Future did not deny that the staff person was at the complainant’s sites or that the staff person had attended a meeting of the child-care provider association. However, MDE never attempted to contact this individual or anyone representing the named child-care provider association. Instead, MDE relied primarily on Feeding Our Future’s statements and documentation completed by sites transferring to Feeding Our Future’s sponsorship to determine that the complaints were unsubstantiated.<sup>30</sup>

MDE also decided against following-up with witnesses offered by a complainant to confirm the credibility of Feeding Our Future’s statements about its recruitment practices. In one instance, a complainant offered a written statement from a witness to support their allegations, but the offer was made after MDE had already shared the complaint with Feeding Our Future and received a response. As a result, MDE decided that collecting additional statements from the witness would be “out of scope” and did not obtain further information from the witness. In another instance, a complainant offered to introduce several witnesses and video surveillance footage as evidence of improper recruitment, but the offer came after MDE had closed the complainant’s most

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<sup>29</sup> This was true for complaints MDE received prior to and after the onset of the COVID-19 pandemic.

<sup>30</sup> Site transfer documentation asks transferring sites to provide a reason for their transfer to a new sponsor. On several occasions, MDE could have verified the reason sites provided for transferring to Feeding Our Future, but did not. For example, several sites stated that they transferred to Feeding Our Future due to their current sponsor paying them late or not at all. By law, sponsors must maintain documentation of meal claims, reimbursements, and payments (7 *CFR*, secs. 225.15(c)(1) and 226.15(e) (2023)). MDE did not request payment documentation from the sponsors of sites who referenced payment issues as their reason for transferring to Feeding Our Future. On other occasions, sites named third parties, some of whom were also federal nutrition program participants, who recommended that they transfer to Feeding Our Future. MDE did not contact these third parties.

recent complaint. MDE did not follow up with the sponsor about the witnesses or collect additional written or verbal statements.

As another example, in an October 2021 complaint, the complainant alleged that Feeding Our Future was “delivering food to nobody in particular - just leaving it in common areas or entry ways” and creating messes at three locations where it did not have permission to operate.<sup>31</sup> Only months before, MDE had taken administrative action against Feeding Our Future, in part due to complaints it received alleging that Feeding Our Future was operating at locations without the property owners’ permission. MDE had deferred this part of the administrative action because Feeding Our Future had assured MDE that it would secure the permission of property owners before beginning operations at its sites.<sup>32</sup>

MDE requested further information from the complainant, an individual claiming to represent the complainant, and Feeding Our Future. However, when Feeding Our Future denied the allegations, MDE did not take reasonable steps to verify the organization’s statements. In its response, Feeding Our Future claimed that it had conducted multiple site visits of one of the sites mentioned in the complaint. For another site, Feeding Our Future asserted that the site only did home deliveries so it would not have been possible for food to be left at the site. In the complaint files we reviewed, we found no evidence that MDE contacted representatives of the sites directly about the nature of their program participation or whether they had received complaints from others at the property where they operated. Further, we found no evidence that MDE requested documentation of Feeding Our Future’s monitoring visits of the sites to verify that the sites were adequately monitored and compliant with federal regulations. MDE also did not obtain documents Feeding Our Future was required to maintain regarding how the site prepared and served meals and snacks. We also found no evidence that MDE visited the sites to observe food preparation and distribution or asked others at the properties if they had similar concerns.

## Recommendations

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In response to the alleged fraud scheme involving Feeding Our Future, the 2023 Legislature established an Office of the Inspector General within MDE.<sup>33</sup> The inspector general is responsible for “protecting the integrity of the department and the state by detecting and preventing fraud, waste, and abuse in department programs,” including CACFP and SFSP.<sup>34</sup>

As MDE establishes its Office of the Inspector General, it will decide whether and how to investigate complaints like the ones we discussed in this chapter. Regardless of

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<sup>31</sup> Complainant, child nutrition complaint forms submitted to Minnesota Department of Education, received on October 21-23, 2021.

<sup>32</sup> We discuss this administrative action in Chapter 5.

<sup>33</sup> *Laws of Minnesota 2023*, chapter 55, art. 12, sec. 12, codified as *Minnesota Statutes 2023*, 127A.21.

<sup>34</sup> *Minnesota Statutes 2023*, 127A.21, subd. 1.

which unit within MDE conducts these investigations, we believe MDE needs to make significant improvements to both its complaint investigation procedures and investigation practices.

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## RECOMMENDATIONS

**MDE should revise its CACFP and SFSP complaint investigation procedures so that they:**

- **Include criteria for prioritizing complaints and initiating proactive investigations.**
- **Address all common types of complaints that MDE staff may encounter.**
- **Provide detailed guidance on evidence collection.**

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As we discussed earlier, MDE did not investigate all of the complaints it received. In some circumstances, such as when the complaint is vague and collecting further evidence is impracticable, deferring an investigation may be reasonable. However, MDE should have clear written criteria for when it will defer an investigation and clear guidance for how its staff should document their decisions. MDE should also have criteria it can use to prioritize complaints so that it can efficiently utilize its limited resources in a way that best protects public resources and the vulnerable populations (children and dependent adults) that CACFP and SFSP serve.

MDE should also develop procedures that describe when it will independently initiate investigations in response to irregularities it discovers, separate from any complaints it receives. If MDE were to notice an unusual trend in claim data or become aware of an irregularity due to an audit or administrative review, federal regulations require that MDE promptly investigate the irregularity.<sup>35</sup> MDE is not required to receive a complaint about an irregularity before it may begin an investigation.

As we previously explained, MDE's written complaint investigation procedures for CACFP are specifically designed to address complaints related to sponsors' recruitment of sites. However, MDE should consider developing a CACFP investigation procedure that addresses complaints beyond those related to recruitment. It should also consider whether a recruitment-specific investigation procedure would be appropriate for SFSP. Alternatively, MDE could develop general complaint investigation procedures that include both CACFP and SFSP in their scope. As we discuss in more detail below, MDE should consider including guidance on how implementation of the procedures should vary depending upon the identity of the complainant, the subject of the complaint, and the type of allegation.

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<sup>35</sup> 7 *CFR*, secs. 225.11(b) and 226.6(n) (2023).

As discussed above, MDE’s current complaint investigation procedures provide only limited guidance on evidence collection. MDE should revise its procedures to provide clear expectations to staff about what evidence should be collected and when and how it should be collected. Relevant guidance could address:

- Witness, complainant, and complaint subject interviews and written questionnaires.
- Compliance-focused onsite visits and reviews.
- Document reviews, including monitoring forms, previous administrative reviews, financial audits, vendor contracts, and attendance and meal claim records.
- Analysis of trends in meal claims and reimbursements.

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## RECOMMENDATION

### **MDE should prioritize independent fact-finding in response to complaints.**

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When evaluating and investigating complaints about *sites* or *vendors*, it is often reasonable for MDE to refer complaints to the relevant sponsor for resolution. By law, sponsors are responsible for ensuring their sites comply with program regulations.<sup>36</sup> Further, sponsors work directly with vendors and site staff, so they have both the relationships and the information necessary to monitor for and remediate noncompliance.

When MDE receives complaints about *sponsors*, however, we think it is imperative for MDE to conduct independent fact-finding. MDE could begin the investigation by independently collecting evidence; reviewing previous administrative reviews conducted by the department; contacting potential witnesses; conducting unannounced site visits of the sponsor, its sites, or vendors; and requesting and reviewing documents (such as attendance sheets, meal and snack counts, sponsor monitoring forms, and invoices) before sharing details of the complaint with the subject and reviewing the subject’s response.

If a complaint involves a dispute between two parties, MDE’s current procedures direct staff to encourage the complainant and subject of the complaint to settle any dispute or misunderstanding on their own. This facilitative approach may be appropriate when MDE believes that the complainant and the subject of the complaint have a respectful relationship. However, encouraging dispute resolution when MDE knows that the relationship is hostile seems unlikely to produce a fair outcome that ensures compliance with the law. In these circumstances, MDE should take a more active role in settling the dispute, including pursuing independent fact-finding as needed.

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<sup>36</sup> 7 *CFR*, secs. 225.14(c)(1), (c)(4), and (d)(3); 225.15(a)(1); 226.15(c); and 226.16(c) and (d) (2023).

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## RECOMMENDATION

### **MDE should limit the information it shares with the subject of a complaint in an effort to protect complainants from retaliation.**

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Protecting complainants from retaliation is an important aspect of being a trusted resource for complainants. Our review of complaint files suggests that such protection could have encouraged greater cooperation with MDE's investigations. As early as February 2019, MDE encountered an individual who was unwilling to share their identity and serve as a witness to support an allegation against Feeding Our Future. On two occasions when MDE staff tried to verify sites' reasons for transferring to Feeding Our Future, the sites refused to answer questions about Feeding Our Future's recruitment. In January 2019, a sponsor alleged that some site representatives feared that they would be retaliated against for providing information to MDE. The same sponsor described an environment of "hostility" in which site representatives did not want to "speak against their peers in their community."<sup>37</sup> In March 2019, when a sponsor offered to introduce witnesses to support one of its complaints about Feeding Our Future, it mentioned that those witnesses preferred that their identities be protected from disclosure to anyone outside of MDE. In another instance, the sponsor stated that a site representative specifically wanted their identity protected from Feeding Our Future's executive director.

In carrying out this recommendation, MDE should consider whether and how to apply existing provisions of the Minnesota Government Data Practices Act. If it finds that these statutes do not adequately address data practices issues related to investigations of CACFP and SFSP program irregularities, MDE should propose legislation to ensure that it can exercise effective oversight of the programs.

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## RECOMMENDATION

### **MDE should evaluate the implementation of recent statutory changes related to its investigative authority, and promptly propose needed changes to the Legislature.**

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The 2024 Legislature amended statutes to give MDE's Office of the Inspector General additional authority, including the ability to administer oaths, subpoena witnesses, and access data of any classification maintained by CACFP and SFSP program participants.<sup>38</sup> Additionally, under certain circumstances, the inspector general may now recommend to the MDE commissioner administrative sanctions, including withholding payments to program participants.<sup>39</sup>

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<sup>37</sup> Complainant, e-mail to CACFP and SFSP Supervisor, Minnesota Department of Education, "Program Recruitment," December 26, 2019.

<sup>38</sup> *Minnesota Statutes* 2023, 127A.21, as amended by *Laws of Minnesota* 2024, chapter 115, art. 10, sec. 2.

<sup>39</sup> *Ibid.*

As it implements these recent statutory changes, MDE should evaluate the extent to which they support the department’s ability to investigate allegations of fraud, waste, and abuse involving CACFP and SFSP. If MDE identifies gaps in its authority, it should promptly propose needed changes to the Legislature, as directed by state law.<sup>40</sup> For example, if MDE determines that it could benefit from limited rulemaking authority to codify its investigation procedures—or additional specificity concerning the rights and duties of program participants as witnesses, complainants, or complaint subjects during investigations—it should proactively work with the Legislature to address these issues.

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<sup>40</sup> *Minnesota Statutes 2023*, 127A.06, requires that MDE recommend to the Legislature and the governor legislation relating to the state system of education that would make its laws “more readily understood and more effective in execution.”

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# Chapter 5: Serious Deficiency Process

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If the Minnesota Department of Education (MDE) finds a sponsor noncompliant with federal law in its administration of the Child and Adult Care Food Program (CACFP) or Summer Food Service Program (SFSP), it must declare the sponsor “seriously deficient.”<sup>1</sup> The purpose of this designation—and the resulting process to correct the deficiency—is to ensure program integrity and compliance with federal regulations. The serious deficiency process also gives MDE the ability to terminate sponsors who prove unwilling or incapable of correcting serious problems.

A state agency can find a sponsor seriously deficient at any time during its participation in CACFP or SFSP.<sup>2</sup> Serious deficiencies include submitting false information on a sponsor’s application, failing to properly monitor sites, claiming reimbursements for meals and snacks not served to participants, or anything else a state agency determines affects a sponsor’s ability to administer the program.<sup>3</sup>



## Key Events in the Timeline: Serious Deficiencies

**January 15, 2021** – MDE issued a first set of serious deficiencies for CACFP and SFSP due to the revocation of Feeding Our Future’s nonprofit status and noncompliance with federal audit requirements.

**March 29, 2021** – MDE initiated a process to terminate Feeding Our Future’s CACFP sponsorship due to a lack of corrective action for the first set of serious deficiencies.

**March 31, 2021** – MDE issued a second set of serious deficiencies for CACFP due to issues regarding Feeding Our Future’s financial viability and management, administrative capabilities, and program accountability.

**May 13, 2021** – MDE vacated the notice of proposed termination and disqualification, therefore deferring the first set of serious deficiencies.

**June 4, 2021** – MDE deferred the second set of serious deficiencies. Feeding our Future was no longer under any serious deficiencies at this point and could continue to operate as normal.

*See Appendix A for additional information.*

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<sup>1</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(i), (c)(2)(i), and (c)(3)(i) (2023).

<sup>2</sup> *Ibid.*

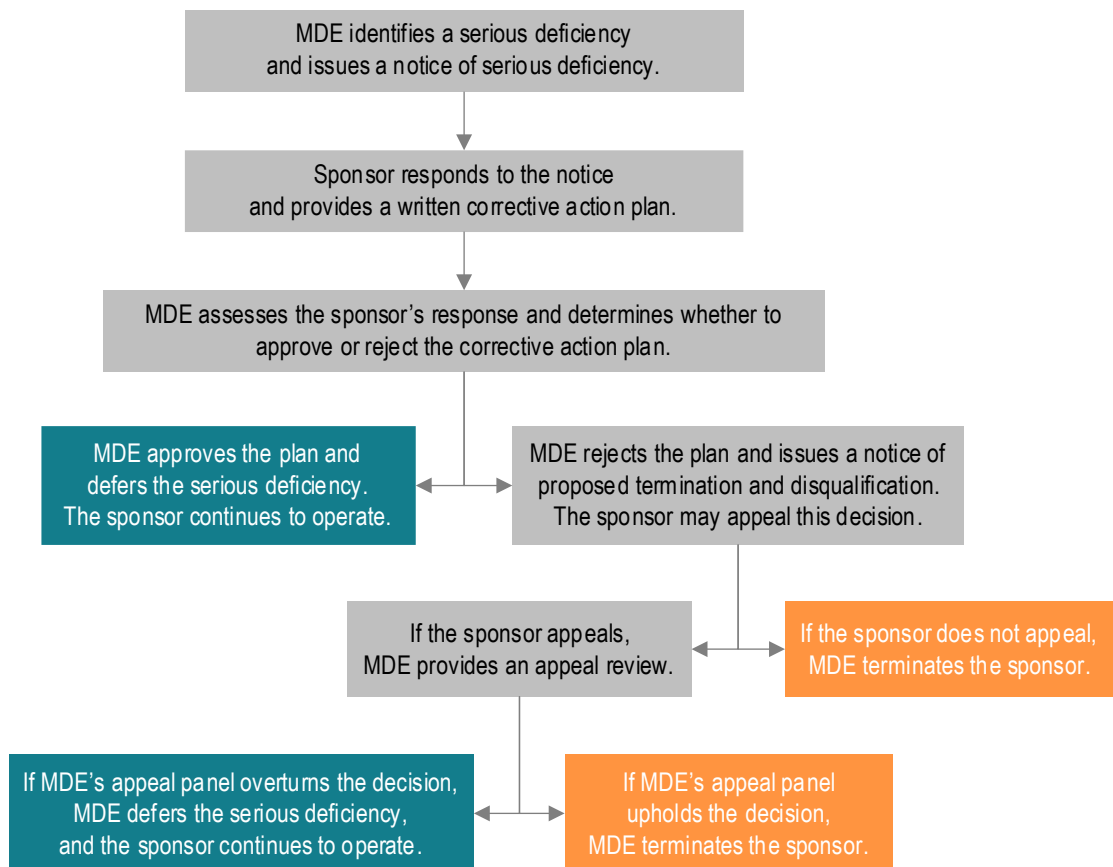
<sup>3</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(ii), (c)(2)(ii), and (c)(3)(ii) (2023). Federal guidance directs state agencies to exercise discretion when deciding whether administrative errors or management problems reach the level of a serious deficiency. U.S. Department of Agriculture (USDA) guidance for CACFP directs state agencies to consider factors including: (1) the severity of the problem, such as whether it was an isolated error or demonstrates a systemic problem; (2) the degree of responsibility attributable to the sponsor; (3) the sponsor’s history of participation in the program; and (4) the degree to which the problem impacts program integrity (U.S. Department of Agriculture, Food and Nutrition Service, *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations, A Child and Adult Care Food Program Handbook* (Washington DC, February 2015), 25-26). For example, minor noncompliance—such as occasional recordkeeping errors—that the sponsor has repeated over time without correction could result in a serious deficiency. However, if MDE finds a violation that threatens the health or safety of program participants, it must immediately take steps to terminate either the sponsor or the site, depending on the program (7 *CFR*, secs. 225.11(f)(3) and 226.6(c)(5)(i) (2023)).

As Exhibit 5.1 shows, after MDE identifies a serious deficiency, MDE notifies the sponsor that it is “seriously deficient” and specifies (1) the actions the organization must take to correct the serious deficiencies, and (2) the time allotted to correct the serious deficiencies. The sponsor then corrects the deficiencies and submits a written plan to MDE describing how it will prevent the deficiencies from reoccurring.<sup>4</sup>

#### Exhibit 5.1

#### The serious deficiency process consists of several steps.

The process ends with either **deferral**, which allows a sponsor to continue participating in CACFP or SFSP, or **termination**.



Source: Office of the Legislative Auditor.

<sup>4</sup> According to federal guidance, a sponsor’s corrective action plan must include detailed information about what it will change, how and when it will make the changes, and who is responsible for the changes, among other things (U.S. Department of Agriculture, Food and Nutrition Service, *Serious Deficiency, Suspension, & Appeals for State Agencies & Sponsoring Organizations, A Child and Adult Care Food Program Handbook* (Washington, DC, February 2015), 19; and U.S. Department of Agriculture, *Summer Food Service Program, State Agency Monitor Guide* (Washington, DC, February 2015), 60).



If MDE believes that the sponsor’s plan will fully correct the serious deficiencies, it defers the deficiencies and allows the sponsor to continue participating in the program. On the other hand, if MDE rejects the sponsor’s corrective action plan, MDE must move to terminate the sponsor from program participation.<sup>5</sup> Sponsors can appeal MDE’s decision to deny an application or terminate their participation in CACFP or SFSP, but they cannot appeal MDE’s serious deficiency determinations.<sup>6</sup>

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**MDE found Feeding Our Future seriously deficient on two occasions, but ultimately deferred all serious deficiencies without taking reasonable steps to ensure the organization implemented corrective actions.**

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MDE declared Feeding Our Future seriously deficient in January 2021 and again in March 2021. The first set of serious deficiencies, which MDE issued in January 2021 for both CACFP and SFSP, related to the revocation of Feeding Our Future’s nonprofit status by the Internal Revenue Service (IRS) and Feeding Our Future’s failure to submit an audit of its financial statements and internal controls. When MDE notified Feeding Our Future of serious deficiencies in CACFP for a second time in March 2021, these same two issues were included as part of MDE’s larger concerns with Feeding Our Future’s financial management, administrative capabilities, and program accountability.<sup>7</sup>

By June 2021, MDE had deferred all of Feeding Our Future’s serious deficiencies, and the organization continued to operate as a sponsor for CACFP and SFSP. As we explain further in this chapter, MDE deferred the serious deficiencies without collecting sufficient evidence that the organization had fully and permanently addressed the serious deficiencies MDE identified. MDE made this decision during a time when it clearly had concerns about the organization’s operations. For example, as we discussed in Chapter 3, when MDE reviewed the organization’s CACFP sponsor application in the fall of 2020, it questioned Feeding Our Future’s compliance with federal regulations. Further, in February 2021, the Federal Bureau of Investigation (FBI) notified MDE of allegations it received involving Feeding Our Future, all of which would later be reflected in the federal



**Requirement for Deferring Serious Deficiencies in CACFP**

If corrective action has been taken to *fully and permanently* correct the serious deficiency(ies) within the allotted time and to the State agency’s satisfaction, the State agency must: (i) Notify the [sponsor’s] executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has temporarily [deferred] its serious deficiency determination; and (ii) Offer [the sponsor] the opportunity to resubmit its application. (Emphasis added.)

— 7 *CFR*, secs. 226.6(c)(1)(iii)(B)(1), (c)(2)(iii)(B)(1), and (c)(3)(iii)(B)(1) (2023)

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<sup>5</sup> 7 *CFR*, secs. 225.11(c); and 226.6(c)(1)(iii)(C), (c)(2)(iii)(C), and (c)(3)(iii)(C) (2023).

<sup>6</sup> 7 *CFR*, secs. 225.13(a); and 226.6(k)(2)(i), (k)(2)(iii) and (k)(3)(ii) (2023). In Minnesota, appeals are made to MDE’s appeal panel, which consists of three MDE employees who were not involved in the action being appealed. After reviewing relevant documentation; analyzing relevant legal requirements; and if requested, holding a hearing, the panel issues a decision on whether to uphold MDE’s decision. Although the appeal panel’s decision is considered MDE’s final administrative determination, state statutes permit that decision to be appealed directly to the Minnesota Court of Appeals (*Minnesota Statutes* 2023, 14.69).

<sup>7</sup> See Appendix A for a detailed timeline of Feeding Our Future’s serious deficiency process.

criminal charges filed in 2022 through early 2024.<sup>8</sup> The FBI’s notification was in addition to the numerous complaints MDE had already received about the organization by this time, which we discussed in Chapter 4.

In this chapter, we first describe the serious deficiencies MDE identified. Then, we discuss shortcomings with MDE’s oversight of the serious deficiency process and provide recommendations for improvement.

## Feeding Our Future’s Serious Deficiencies

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### Nonprofit Status Deficiency

Feeding Our Future’s eligibility to participate as a sponsor in CACFP and SFSP was based, in part, on its status as a private nonprofit organization. For an organization to be considered a private nonprofit organization under federal laws related to CACFP and SFSP, it must be tax-exempt under relevant provisions of the U.S. Internal Revenue Code.<sup>9</sup> The IRS revoked Feeding Our Future’s tax-exempt status in February 2020, due to Feeding Our Future’s failure to meet IRS reporting requirements for three consecutive years. The IRS posted the revocation on its website in May 2020.

As a result, when Feeding Our Future certified the truthfulness of its SFSP sponsor application and signed its program agreement with MDE in May 2020, it misrepresented itself as a tax-exempt, private nonprofit organization. When Feeding Our Future submitted its annual CACFP sponsor application in August 2020, Feeding Our Future again misrepresented its tax-exempt status on a sponsorship application.<sup>10</sup>

In January 2021, MDE found Feeding Our Future seriously deficient in both CACFP and SFSP, in part, due to the lapse of its nonprofit status.<sup>11</sup> MDE’s March 2021 serious deficiency notice for CACFP cited Feeding Our Future’s failure to update its policies and procedures to ensure the organization would meet IRS reporting requirements, among other things.

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<sup>8</sup> Specifically, the FBI asked whether MDE had received any complaints related to Feeding Our Future. The FBI stated that it had received allegations that Feeding Our Future’s executive director was “accepting kickbacks for providing food contracts through USDA,” “submitting for reimbursements for meals without proper or insufficient paperwork,” and was not “providing the meals” they said they had provided (Special Agent, Federal Bureau of Investigation, e-mail to Risk Manager, Minnesota Department of Education, “[Executive Director, Feeding Our Future],” February 22, 2021).

<sup>9</sup> 7 *CFR*, secs. 225.2, 225.14(b), and 226.15(a) (2023).

<sup>10</sup> We asked MDE officials why the department did not address the revocation of Feeding Our Future’s tax-exempt status prior to approving its SFSP sponsor application in June 2020. An MDE official stated that staff verified Feeding Our Future’s nonprofit status in March or April 2020, when the organization notified MDE of its intent to apply to be an SFSP sponsor. Since the IRS did not post Feeding Our Future’s February 2020 revocation on its website until May 2020, and MDE did not check Feeding Our Future’s nonprofit status again before it approved Feeding Our Future’s SFSP application, MDE approved the application assuming that Feeding Our Future still had tax-exempt status.

<sup>11</sup> MDE cited Feeding Our Future’s submission of false information on an application as a serious deficiency for SFSP, but not for CACFP.

## Federal Single Audit Deficiency

Federal law requires that nonfederal entities that annually spend \$750,000 or more in federal funds be audited.<sup>12</sup> An independent auditor must perform the audit, which may be specific to an individual federal program or cover multiple programs (called a “federal single audit”).<sup>13</sup> The audit must be submitted to a digital audit repository, known as the Federal Audit Clearinghouse, within 30 calendar days after the auditee receives the audit report or within nine months after the end of the auditees’ fiscal year, whichever is earlier.<sup>14</sup>

As part of an audit, auditees must provide to the auditor (1) financial statements, including a schedule showing the amount of federal fund expenditures by federal program; (2) notes on the accounting policies used to prepare the schedule of federal expenditures; (3) a summary of prior audit findings and corrective actions to address those findings; and (4) access to staff, accounting books and records, and any other supporting documentation or information needed for the audit.<sup>15</sup> As we discuss in greater detail below, federal single audits are not purely financial. They evaluate the auditee’s compliance with legal requirements that could materially affect the program, in addition to providing an accounting of their program-related expenditures.

MDE first notified Feeding Our Future that its federally required audit was past due in October 2020. Feeding Our Future responded that it was utilizing a waiver that extended the audit deadline to December 31, 2020. In early January 2021, when MDE confirmed that Feeding Our Future had failed to upload its audit to the Federal Audit Clearinghouse by the extended deadline, MDE e-mailed Feeding Our Future about the status of its audit. After receiving no response, MDE declared Feeding Our Future seriously deficient in January 2021, in part, due to its failure to meet single audit requirements. In March 2021, MDE issued another serious deficiency related to Feeding Our Future’s federal single audit. The March serious deficiency notice stated that the audit Feeding Our Future submitted in response to the January serious deficiency notice was incomplete and conducted by an unlicensed auditor.

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<sup>12</sup> 2 *CFR*, sec. 200.501(a) (2023).

<sup>13</sup> 2 *CFR*, secs. 200.501(a); 200.507(a)-(b); and 200.514 (2023).

<sup>14</sup> 2 *CFR*, sec. 200.512(a)-(d) (2023).

<sup>15</sup> 2 *CFR*, secs. 200.508 and 200.510 (2023).

## Performance Standards Deficiency

Federal regulations provide three performance standards for sponsors' administration of CACFP and SFSP, as outlined in the boxes below.<sup>16</sup>

CACFP and SFSP Performance Standard 1: Financial Viability and Management	CACFP and SFSP Performance Standard 2: Administrative Capability	CACFP and SFSP Performance Standard 3: Program Accountability
<p>Sponsors must be financially viable and must:</p> <ul style="list-style-type: none"> <li>• Have adequate resources to operate on a daily basis (CACFP only).</li> <li>• Have appropriate site recruitment practices.</li> <li>• Have adequate resources to pay debts, employees, and suppliers during temporary interruptions in program payments.</li> <li>• Document their financial viability, such as through financial statements and audits.</li> <li>• Have budgets that contain necessary, reasonable, allowable, and documented costs.</li> </ul>	<p>Sponsors must be capable of administering CACFP or SFSP and must have:</p> <ul style="list-style-type: none"> <li>• Appropriate and effective management practices to ensure compliance with federal law.</li> <li>• Adequate numbers and types of staff, including monitoring staff.</li> <li>• Written policies and procedures that (1) assign program responsibilities and duties and (2) ensure compliance with civil rights regulations.</li> </ul>	<p>Sponsors must have internal controls and other management systems in place to guarantee fiscal accountability and other program operational requirements. For example, they must have:</p> <ul style="list-style-type: none"> <li>• An independent governing board (CACFP only).</li> <li>• Written management controls to ensure fiscal integrity and accountability.</li> <li>• A system of safeguards and controls to prevent and detect improper financial activities by employees.</li> <li>• Recordkeeping systems to account for and retain program records.</li> </ul>

In March 2021, MDE declared Feeding Our Future seriously deficient in CACFP for failing to meet each of the three performance standards. It cited, among other things, Feeding Our Future's continued noncompliance with federal single audit requirements; the sponsor's rapid growth; and shortcomings in the organization's financial management, administrative capability, and program accountability.<sup>17</sup> In contrast to the previous serious deficiency determination, MDE used the March 2021 serious deficiency determination as grounds to (1) withhold payment from Feeding Our Future, (2) stop processing Feeding Our Future's site applications, and (3) deny Feeding Our Future's application to be an SFSP sponsor.

<sup>16</sup> 7 *CFR*, secs. 225.6(d)(1)-(3); and 226.6(b)(1)(xviii)(A)-(C) and (b)(2)(vii)(A)-(C) (2023). In the years Feeding Our Future participated in SFSP, federal regulations did not require the organization to comply with the SFSP-specific performance standards shown above. The regulations were amended in October 2022 to add these requirements, more than eight months after MDE terminated Feeding Our Future's participation in SFSP.

<sup>17</sup> As we described in Chapter 3, Feeding Our Future submitted, on an annual basis, a sponsor application and budget. In these budgets, Feeding Our Future provided estimates of the amount of reimbursement it expected to claim through CACFP. By the end of February 2021—five months into the 2021 CACFP program year—the number of meals and snacks Feeding Our Future claimed for reimbursement, and the number of sites under its sponsorship, approached or exceeded the 12-month estimates found in its 2021 program year application and budget.

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## Shortcomings in Oversight

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For each of the serious deficiencies MDE identified, the department required Feeding Our Future to take certain corrective actions before it would defer them. For the first set of serious deficiencies, MDE required Feeding Our Future to submit a corrective action plan by the end of January 2021. When it did not provide a complete response by the deadline, MDE began a process to terminate Feeding Our Future's participation in CACFP.<sup>18</sup>

However, by June 2021, MDE had deferred all of Feeding Our Future's serious deficiencies based on additional information it received from the organization. But, as we stated at the beginning of the chapter, MDE took only limited steps to confirm the accuracy of this information and Feeding Our Future's claims. Below, we describe three areas in which MDE either could have obtained information—or already had information in its possession—that we think should have led MDE to pursue terminating Feeding Our Future's participation in CACFP and SFSP months earlier than it did.<sup>19</sup> In summary, MDE:

- Accepted an “audit” that did not meet federal audit standards.
- Did not take basic steps to verify the information Feeding Our Future provided in its corrective action plans.
- Failed to investigate indicators of the alleged fraud scheme evident in documentation it obtained to validate Feeding Our Future's meal claims.

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### **MDE accepted an audit of Feeding Our Future's use of federal funds that did not meet basic audit standards.**

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In late January 2021, Feeding Our Future submitted a copy of a single audit report to MDE. In early March, MDE determined that Feeding Our Future's auditor had not uploaded the audit to the Federal Audit Clearinghouse, as required by law.<sup>20</sup> MDE also noted that the audit was missing required elements and was conducted by an unlicensed auditor. By the end of March 2021, Feeding Our Future's audit still had not been uploaded to the clearinghouse; Feeding Our Future had not responded to MDE's request to provide its auditor's contact information so that MDE could discuss the audit's missing elements with the auditor; and Feeding Our Future had not submitted acceptable federal-single-audit-related written procedures and internal controls.

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<sup>18</sup> According to an MDE official, MDE did not begin the process to terminate Feeding Our Future's participation in SFSP because CACFP and SFSP have different serious deficiency and appeal timelines, which would have made it difficult to combine the two processes. As a result, MDE opted to move forward with only the CACFP termination.

<sup>19</sup> MDE terminated Feeding Our Future's participation in CACFP and SFSP on January 20, 2022, the day federal authorities executed search warrants at Feeding Our Future's office and several other locations affiliated with the organization.

<sup>20</sup> 2 *CFR*, sec. 200.512(d) (2021).

In late March 2021, because of these and other issues, MDE moved forward with a proposal to terminate Feeding Our Future's participation in CACFP. In late April 2021, Feeding Our Future responded by providing an engagement letter with a new auditor to complete a new audit covering the same period as the incomplete audit it had provided to MDE in January 2021. Further, Feeding Our Future provided more detailed written procedures and internal controls that described the roles of Feeding Our Future's executive director, senior staff members, the board of directors, and contract auditors in ensuring its future compliance with federal single audit requirements.

However, the engagement letter contained signs that any resulting audit would not meet federal single audit requirements. For example, the engagement letter lacked any mention of a federal single audit, federal rules relevant to federal single audits, generally accepted government auditing standards, or the year for which the audit was needed.

Along with the engagement letter, Feeding Our Future provided MDE with the new auditor's contact information. We asked MDE if it ever contacted the new auditor about Feeding Our Future's federal single audit.<sup>21</sup> MDE stated that it did not, missing an opportunity to clarify with the new auditor and Feeding Our Future what should, at a minimum, be included within the audit's scope.

Further, the federal single audit Feeding Our Future eventually submitted to MDE in May 2021 was completed by yet a *different* auditor than the one that Feeding Our Future told MDE it had hired to complete the audit. MDE did not ask Feeding Our Future about this change in auditors.

We identified a number of issues with the audit report Feeding Our Future submitted to MDE that we think MDE staff should have identified and acted on. For example, there were discrepancies between the amounts of CACFP reimbursements Feeding Our Future reported in the audit when compared to MDE's claims data. The audit report also lacked components required by federal law. For example, the report did not include a section on internal controls over financial reporting or a section on compliance and internal controls related to CACFP requirements.

Based on these omissions from the audit report, it would have been reasonable for MDE to have required the auditor to provide documentation showing how it conducted the audit. Federal law requires that auditors retain such documentation for at least three years after the issuance of the audit report and that "Audit documentation must be made available upon request to the...oversight agency...at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities."<sup>22</sup> We found no evidence that MDE requested or reviewed audit documentation from Feeding Our Future's auditor.

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<sup>21</sup> In a May 6, 2021, letter to Feeding Our Future, MDE stated it would "meet with [the auditor] to receive confirmation the audit is being completed...[the auditor] must respond to MDE's request for information regarding their plan to complete the audit and the status of the single audit.... The single audit must include all required sections as outlined in 2 CFR 200 Subpart F in order for the single audit to be accepted." (Supervisor of Business Operations, Minnesota Department of Education, letter to Executive Director and President of the Board of Directors, Feeding Our Future, *Regarding: Notice of Proposed Termination and Disqualification of CACFP Sponsorship*, May 6, 2021.)

<sup>22</sup> 2 CFR, sec. 200.517 (2021).

Had MDE reviewed audit documentation, it would have likely discovered that the auditor did not meet basic requirements for a federal single audit. Most notably, the auditor failed to:

- Plan an adequate risk assessment of Feeding Our Future’s operations and internal controls to identify the risk of material misstatements in Feeding Our Future’s financial statements, including material misstatements due to fraud.
- Ask Feeding Our Future management and staff how they manage fraud risks and whether they have any knowledge of any actual or suspected fraud related to the nonprofit organization.
- Examine inflows of funds to Feeding Our Future.

Given these and other shortcomings, the documents Feeding Our Future’s auditor submitted to the Federal Audit Clearinghouse in May 2021 cannot reasonably be characterized as a federal single audit. Therefore, we think MDE should have determined that the parts of Feeding Our Future’s corrective action plan that referenced the audit’s submission were unacceptable and incomplete.

Such a determination would have withstood the scrutiny of Minnesota’s accounting regulators. In January 2023, the Minnesota Board of Accountancy determined that the audit report did not meet generally accepted auditing standards and that it “played a role in allowing Feeding Our Future to engage in a fraud resulting in the misappropriation of more than \$250,000,000 in public funds.”<sup>23</sup> As a result of the auditor’s “pervasive failures” during its engagement with Feeding Our Future, the Minnesota Board of Accountancy suspended the auditor from practicing as a certified public accountant on the grounds that they were a threat to the public.<sup>24</sup>

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**MDE did not collect sufficient evidence to determine whether Feeding Our Future resolved deficiencies related to its financial management and monitoring of its sites.**

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In late April 2021, Feeding Our Future submitted to MDE the corrective action plan it developed in response to the March 2021 serious deficiency. While Feeding Our Future’s plan largely appeared to be responsive to MDE’s concerns, MDE did not take proactive steps to determine if Feeding Our Future had fully and permanently corrected its serious deficiencies.

For example, Feeding Our Future’s corrective action plan and updated financial management policy show that a contracted accounting firm and separate auditing firm

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<sup>23</sup> State of Minnesota Board of Accountancy, *In the Matter of the CPA Firm Permit of CPA Global Portfolio Consulting C.A., LLC, and the CPA Certificate of Charles Amevo, Order Continuing Temporary Suspension* (File nos. 2022-029, -56, -57, January 26, 2023), 2.

<sup>24</sup> State of Minnesota Board of Accountancy, *In the Matter of the CPA Firm Permit of CPA Global Portfolio Consulting C.A., LLC, and the CPA Certificate of Charles Amevo, Temporary Suspension Order* (File nos. 2002-029, -56, -57, January 13, 2023), 5. In May 2024, the Minnesota Board of Accountancy issued a consent order imposing several sanctions on the auditor, including revoking the auditor’s certified public accountant certificate.

were to play a central role in managing Feeding Our Future's finances moving forward. Specifically, Feeding Our Future claimed that the yet-to-be-hired accounting firm would:

oversee all Feeding Our Future's accounting needs, including its bookkeeping, balance sheets, journal entries, monthly closeouts, and reconciling its activities and cash flow. The accounting firm will be asked to make recommendations on best practices and policies for all record and bookkeeping. In addition, the accounting firm will be responsible for completing all federal and state required tax documentation and ensuring that Feeding Our Future remains in good standing.<sup>25</sup>

We asked MDE if it ever reviewed documentation, such as a list of firms contacted, to support Feeding Our Future's claim that it was in the process of hiring an outside firm to handle its accounting. MDE replied that it did not review any documentation related to the hiring process because Feeding Our Future's legal counsel had asserted, in court, that the hiring process was ongoing. Further, MDE said that it would not typically review procurement documentation, including contracts, until a sponsor's administrative review; Feeding Our Future's next administrative review was scheduled to begin in January 2022.

Another example of MDE's failure to adequately scrutinize Feeding Our Future's corrective action plan was its acceptance of the organization's procedures to manage its rapid growth. In its corrective action plan, Feeding Our Future claimed its sites were "better staffed and equipped than any other sponsor in the history of the program," and that Feeding Our Future maintained direct control over food service and meal and snack counts for some sites.<sup>26</sup> Feeding Our Future also provided information and policies about how it trained and onboarded new sites, and how it provided ongoing training and technical assistance to staff at existing sites. According to Feeding Our Future, this included increased monitoring visits of sites significantly beyond the federal requirements that existed prior to the COVID-19 pandemic (as we explained in Chapter 3, pandemic-related waivers permitted fewer visits). Feeding Our Future also claimed that it held an "open house" meeting with sites each Friday in March 2021 in order to review program rules and provide an opportunity for sites to ask questions.

To onboard new sites, Feeding Our Future claimed that it met with sites four times before they started making claims (including the preapproval visit required by CACFP rules), with the fourth visit including an observation of meal service as well as training on attendance, meal counts, and the claims-submission process. Feeding Our Future also claimed that it visited all sites within their first six weeks of operation to observe meal service, as required by law, and that designated staff would visit each site monthly until the site could consistently demonstrate compliance with all program regulations.

However, MDE took few steps to confirm that Feeding Our Future was implementing the onboarding and monitoring practices it described in its corrective action plan. For example, MDE did not collect records that could have confirmed whether the March 2021 open houses occurred. Similarly, MDE did not collect documentation of Feeding Our Future's onboarding visits of new sites, despite Feeding Our Future's claim that "routine" visits of new sites for compliance was a process it implemented

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<sup>25</sup> Executive Director, Feeding Our Future, *Corrective Action Plan – March 31, 2021*, 9.

<sup>26</sup> *Ibid.*, 5.



several months prior to the submission of its corrective action plan. Further, MDE did not review documentation to confirm Feeding Our Future's claims that its program staff increased monitoring visits of existing sites beyond federal minimum requirements. Finally, MDE never contacted staff at Feeding Our Future sites to determine if the organization was implementing its new policies.

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**Meal validation documents MDE collected from Feeding Our Future contained indications of the alleged fraud, but MDE approved all meal claims without investigating these irregularities.**

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As part of MDE's March 2021 notice of serious deficiency to Feeding Our Future, MDE informed Feeding Our Future that it would stop paying the organization's meal claims until it submitted a corrective action plan and documentation sufficient to validate its meal claims. MDE based this action on a section of federal regulations that applies across programs that allows state agencies to take specific steps to encourage compliance with federal laws.<sup>27</sup> In late April 2021, Feeding Our Future began providing claims documentation to MDE for 104 sites, including meal and snack counts, attendance records, menus, and vendor invoices.

According to an MDE official, a team of staff compared the number and types of meals and snacks Feeding Our Future claimed to counts of meals and snacks purportedly provided at sites. They also reviewed documentation of purchased food to determine whether it was sufficient to cover the claimed number of meals and snacks. The MDE official also said staff reviewed menus to ensure they met nutrition requirements. MDE's meal validation process was conducted offsite. MDE did not visit, virtually or otherwise, any of the sites (or vendors that served the sites) as part of its review.

We reviewed Feeding Our Future's meal validation documents for 28 of the 104 sites included in MDE's request. We selected sites that were directly named in the federal indictments or were a site whose vendor was named in the indictments.<sup>28</sup>

We identified a number of concerns in the files we reviewed. In summary, MDE did not consistently request from Feeding Our Future missing or incomplete documentation it would have needed to verify the validity of meal claims. MDE also did not question the organization about documentation that contained indications of the alleged fraud. For example:

- MDE required that Feeding Our Future provide **daily meal and snack count records** for CACFP and SFSP sites. Of the 28 sites we examined, 13 sites claimed the exact same number of meals and snacks served for six or seven days a week for the entire month. Another eight sites claimed a very similar (within ten) number of meals and snacks for each day of the month. Several of

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<sup>27</sup> MDE cited 2 *CFR*, sec. 200.339 (2023). In *Partners in Nutrition d/b/a Partners in Quality Care's Consolidated Appeals*, 995 N.W.2d 631 (Minn. Ct. App. 2023), the Minnesota Court of Appeals concluded, in relation to a different CACFP sponsor, that MDE could not withhold reimbursement payments on the basis of this regulation. Rather, the court held that MDE could require the prepayment submission of required documentation that could, in turn, form the basis to deny reimbursement under CACFP.

<sup>28</sup> We selected these sites based on charging documents made public between September 2022 and March 2023.

the federal indictments related to the alleged fraud scheme cited identical or nearly identical meal count sheets as evidence of the alleged crimes.

MDE did not provide us with any evidence that showed it questioned Feeding Our Future about these patterns of claims. MDE requested that Feeding Our Future provide meal and snack count records for the four sites that initially did not have meal and snack count records, but MDE did not receive these records.

- CACFP sites were required to have **attendance records**. Four of the 12 CACFP sites in our review did not have attendance records; MDE followed up with Feeding Our Future about each missing record. However, there were other discrepancies—like attendance records that showed more or fewer kids in attendance than meals and snacks served, disorganized records that were impossible to discern, and inappropriate ages of children based on the classroom they were assigned—which MDE did not question. According to the federal indictments, some defendants created fake attendance records to cover up the alleged fraud, with some records containing computer-generated names or ages.
- Feeding Our Future was required to provide **menus** that reflected the actual meals and snacks served in March 2021 for each CACFP and SFSP site. Nearly all of the sites we reviewed (25 of the 28 sites) did not provide menus that showed meals and snacks served. Some of the menus were not dated and contained the exact same food items for each meal. Further, 7 of the 25 sites did not provide a menu at all. While all 25 should have received further scrutiny—as they did not meet MDE’s standards—MDE only followed-up about the menus at 13 of the 25 sites.
- MDE required Feeding Our Future to provide **vendor invoices** for SFSP sites. Of the 17 SFSP sites in our review, 8 did not have vendor invoices as required. MDE did not contact Feeding Our Future to request invoices for any of the eight sites. Among the sites that did provide invoices, MDE also did not follow up on concerning issues, such as invoices that contained very little information on the food purchased; invoices that specified meal types provided that were not claimed (such as an invoice for “breakfast” when the site did not claim any breakfasts); and receipts for things like car washes and a pressure washer, which are not allowable expenses under SFSP.

When MDE followed up with Feeding Our Future to request additional documentation for certain sites, it told Feeding Our Future that it would “disallow claims missing documentation if not received by June 18, 2021.”<sup>29</sup> According to MDE officials, Feeding Our Future did not respond to the department’s request. However, MDE did not deny or adjust downward Feeding Our Future’s claims for any of the sites for which we had concerns, nor did it further investigate irregularities evident in the

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<sup>29</sup> CACFP Review Team Lead, Minnesota Department of Education, e-mail to Executive Director, Feeding Our Future, “Claim Validation,” June 11, 2021.

documentation it already had.<sup>30</sup> MDE paid a total of \$10.1 million for 3.8 million meals and snacks purportedly served in March 2021 at these 28 sites.

MDE cited a lack of U.S. Department of Agriculture (USDA) guidance, COVID-19-related waivers, and ongoing litigation as reasons for why it made no downward claim adjustments or did not deny any claims. An MDE official told us that USDA provided MDE unclear responses on how to validate meal claims and recognize red flags in the context of the COVID-19 waivers. Further, an MDE official said that when MDE reached out to USDA to notify it of unusual attendance patterns, USDA responded that perfect attendance would be possible due to the waivers.

As we discuss further in Appendix B, from late 2020 through early 2022, MDE and Feeding Our Future were engaged in litigation. On April 13, 2021, Feeding Our Future filed a motion for a temporary restraining order precluding MDE from withholding reimbursements for Feeding Our Future’s meal claims. In the motion, Feeding Our Future asserted that MDE’s refusal to pay the organization’s meal claims violated federal policy. During an April 21, 2021, hearing, a Ramsey County District Court judge indicated that MDE’s actions were “a real problem,” but did not rule on the matter because it had not been presented in a way that gave the court jurisdiction.<sup>31</sup> In response to the judge’s statement, MDE resumed paying Feeding Our Future.<sup>32</sup>

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## RECOMMENDATION

**MDE should conduct more active follow-up to ensure sponsors and sites fully implement corrective action plans that result from serious deficiency processes.**

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While federal regulations do not *require* MDE to conduct onsite visits or collect additional evidence before deferring serious deficiencies, it also does not prevent MDE from conducting these activities.<sup>33</sup> Given the information it had at the time, we think it is reasonable to expect MDE to have, at a minimum, collected additional documentation and conducted onsite visits of Feeding Our Future and its sites to verify statements Feeding Our Future made in its corrective action plans. By June 2021, MDE should have viewed Feeding Our Future as an entity at high risk for noncompliance and fraud. Feeding Our Future’s size alone meant that any fraud or noncompliance—even if it affected only a small percentage of meal claims—posed significant risks to both taxpayers and the individuals who depended on Feeding Our Future for food. As a result, MDE should have taken additional steps beyond the minimum required by law

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<sup>30</sup> As we discussed in Chapter 4, federal regulations require MDE to “promptly investigate complaints received or irregularities noted in connection with” CACFP and SFSP and “take appropriate action to correct any irregularities” (7 *CFR*, secs. 225.11(b) and 226.6(n) (2023)).

<sup>31</sup> Motion Hearing, April 21, 2021, 64:10, *Feeding Our Future v. Minnesota Department of Education*, 62-CV-20-5492.

<sup>32</sup> Despite MDE’s resumption of payment in April 2021, Feeding Our Future continued to seek a temporary restraining order against MDE over the “stop pay” issue until the judge denied the request as moot at the end of June 2021.

<sup>33</sup> As we noted in Chapter 3, federal pandemic-era waivers in effect at the time also did not prevent MDE from conducting these activities.

when assessing whether Feeding Our Future was fully and faithfully implementing its corrective action plan.

As we recommended in Chapter 3, MDE should contact staff at sites and the sponsor directly to confirm whether the sites or sponsors have implemented the changes they pledge to make in their corrective action plans. Further, MDE should request additional evidence and conduct site visits to inform its decision before deferring serious deficiencies.

If a corrective action plan is complex or includes many elements, it may be unreasonable to expect MDE to verify that every element of a plan is fully implemented. In these cases, MDE should take a risk-based approach to verifying sponsors' implementation of their corrective action plans that considers both the riskiness of the sponsors involved and the risks to program integrity that the elements of a corrective action plan seek to address. For example, the corrective action plan from a small sponsor whose serious deficiencies centered on poor recordkeeping may require only minimal follow-up from MDE. In contrast, the corrective action plan of a large sponsor with a history of serious deficiencies in financial management and program accountability likely requires more intensive follow-up.

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# List of Recommendations

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- The Legislature should either establish criteria in statute or give the Minnesota Department of Education (MDE) the authority to conduct rulemaking to establish criteria that the department must consider when determining whether to approve organizations for the Child and Adult Care Food Program (CACFP) or Summer Food Service Program (SFSP). (p. 33)
- MDE should take additional steps to verify information provided in support of sponsorship applications submitted by high-risk applicants. (p. 34)
- MDE should conduct follow-up reviews, as needed, to ensure sponsors fully implement corrective action plans that result from administrative reviews. (p. 42)
- MDE should place a greater emphasis on program integrity and risk-based monitoring if oversight requirements are waived again in the future. (p. 48)
- MDE should revise its CACFP and SFSP complaint investigation procedures so that they:
  - Include criteria for prioritizing complaints and initiating proactive investigations.
  - Address all common types of complaints that MDE staff may encounter.
  - Provide detailed guidance on evidence collection. (p. 59)
- MDE should prioritize independent fact-finding in response to complaints. (p. 60)
- MDE should limit the information it shares with the subject of a complaint in an effort to protect complainants from retaliation. (p. 61)
- MDE should evaluate the implementation of recent statutory changes related to its investigative authority, and promptly propose needed changes to the Legislature. (p. 61)
- MDE should conduct more active follow-up to ensure sponsors and sites fully implement corrective action plans that result from serious deficiency processes. (p. 75)



OLA

# Appendix A: Timeline of Key Events

## Key for Timeline



Depicts events concerning MDE's review of Feeding Our Future's applications or operations, as we discussed in Chapter 3.



Depicts events concerning complaints MDE received about Feeding Our Future, as we discussed in Chapter 4.



Depicts events corresponding to Feeding Our Future's serious deficiencies in two federal nutrition programs, as we discussed in Chapter 5.







Depicts events corresponding to the *Feeding Our Future v. Minnesota Department of Education* court case, as we discuss in Appendix B.

On the following pages, we present a detailed timeline of the Minnesota Department of Education's (MDE's) oversight of Feeding Our Future. This timeline begins with the inception of Feeding Our Future as an organization in November 2016, and goes through February 2024.

Some events in the timeline below are identified by an icon, as defined by the box to the left. The "Comments" column in the timeline indicates additional information relevant to the particular event, such as what caused the particular event to occur, or a resulting effect of the event.





### Exhibit A.1

#### Timeline of Key Events Related to Feeding Our Future's Participation in Federal Nutrition Programs

Date	Event	Comments
November 7, 2016	<b>Feeding Our Future was established.</b>	
 February-March 2017	<b>Feeding Our Future applied to MDE to become a Child and Adult Care Food Program (CACFP) sponsor for the 2017 program year.<sup>1</sup></b>	
 March 13, 2017	<b>MDE notified Feeding Our Future that its CACFP sponsor application was incomplete.</b>	MDE requested additional information pertaining to Feeding Our Future's site recruitment practices, financial viability, and governing board members' responsibilities, among other things.
 April 7, 2017	<b>MDE denied Feeding Our Future's CACFP sponsor application because it did not demonstrate financial viability, administrative capability, and program accountability.</b>	MDE stated this action was appealable.
 April 12, 2017	<b>Feeding Our Future appealed MDE's decision to deny its CACFP sponsor application.</b>	



*Continued on the next page.*

<sup>1</sup> CACFP program years begin on October 1 and end on September 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2017 began on October 1, 2016, and ended on September 30, 2017.







Date	Event	Comments
	June 12, 2017 <b>MDE's appeal panel accepted the appeal from Feeding Our Future and approved its CACFP application.</b>	
July 3, 2017	<b>The Minnesota Court of Appeals issued an opinion in favor of another sponsor, Partners in Nutrition.</b> MDE initially rejected Partners in Nutrition's CACFP application based on a lack of proof of financial viability. The court determined MDE did not appropriately consider all evidence and based its decision on an incorrect interpretation of federal law.	MDE had denied Feeding Our Future's initial application earlier in 2017, partially based on a lack of demonstrated financial viability.
	February 26, 2018 <b>MDE conducted a preapproval visit of Feeding Our Future for CACFP.</b> Feeding Our Future began operation as a CACFP sponsor soon after the visit.	
	June 2018 <b>MDE received a complaint regarding Feeding Our Future's management practices.</b> The complainant stated that Feeding Our Future's executive director had improperly taken control of the organization from the other founding members. An MDE official responded, asking the complainant to work the issues out with Feeding Our Future's executive director. The MDE official stated that they did not wish to be kept informed of future developments unless there was a conviction for any business-related offense, or the organization was no longer in good standing with the Internal Revenue Service (IRS).	This was the first complaint MDE received involving Feeding Our Future.
	July 25, 2018 <b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b> The complaint stated that Feeding Our Future's executive director had been meeting with sites currently sponsored by their organization to discuss moving or transferring their food program to Feeding Our Future. MDE responded by discussing the complaint with Feeding Our Future's executive director and adding an addendum to MDE's agreement with Feeding Our Future that placed limitations on site transfers.	This was the second complaint MDE received involving Feeding Our Future.
July 27, 2018	<b>Feeding Our Future and MDE entered into an agreement allowing it to receive reimbursements for claimed CACFP meals and snacks.</b>	
August 2018	<b>Feeding Our Future began claiming meals and snacks served through CACFP.</b> Feeding Our Future claimed a total of nearly 13,000 meals and snacks in August 2018.	

*Continued on the next page.*





Date	Event	Comments
 September 24, 2018	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>The complainant stated that about ten of their organization's sites had left to work with Feeding Our Future. Feeding Our Future allegedly offered to sponsor the sites for a lower administrative fee percentage than what the complainant's organization charged. MDE encouraged the complainant to discuss their concerns directly with Feeding Our Future's executive director, and stated MDE would only step in to investigate if the two parties could not come to an agreement.</p>	This was the third complaint MDE received involving Feeding Our Future.
 December 2018	<p><b>MDE began its only administrative review of Feeding Our Future.</b></p>	
 January 22, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>MDE sent the complaint to Feeding Our Future's executive director and asked that they provide a written response. Based on that response, and previous correspondence between MDE and the sites that transferred to Feeding Our Future, MDE determined that there was not sufficient evidence to conclude that Feeding Our Future used unethical recruiting practices. MDE suggested that in the future, the two sponsors attempt to resolve conflicts with each other before making complaints to MDE.</p>	This was the fourth complaint MDE received involving Feeding Our Future.
 February 15, 2019	<p><b>MDE completed its only administrative review of Feeding Our Future and issued findings.</b></p> <p>There were 22 findings in this review, and MDE required Feeding Our Future to prepare a corrective action plan for each finding.</p>	Due to the number of concerns found during the review, MDE told Feeding Our Future it would conduct a follow-up review within six to nine months. As we discussed in Chapter 3, this follow-up review never occurred.
 February 20, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's management practices.</b></p> <p>The complainant stated in a letter to the U.S. Department of Agriculture (USDA) Midwest Regional Office that the executive director of Feeding Our Future took control of the entity through theft and forgery. In the letter, the complainant expressed other concerns, including that MDE's actions in response to their previous complaints were inadequate.</p>	This was the fifth complaint MDE received involving Feeding Our Future.
 February 25, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>The complainant passed along an anonymous letter that alleged Feeding Our Future was recruiting sites at a local child-care organization meeting.</p>	This was the sixth complaint MDE received involving Feeding Our Future.







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Date	Event	Comments
 April – August 2019	<p><b>MDE completed a review of Feeding Our Future's revised budget for the 2019 CACFP program year.</b></p> <p>MDE had several concerns, including that Feeding Our Future's staff salaries were above average and its cash flow was insufficient to cover staff salaries and office space rental costs. MDE approved the revised budget.</p>	See Exhibit 3.1 for a complete list of MDE's concerns.
 June 20, 2019	<p><b>MDE accepted Feeding Our Future's corrective action plan.</b></p> <p>However, MDE determined that additional follow-up would be required.</p>	The corrective action plan was a result of the administrative review conducted by MDE that concluded in February 2019.
 June 27, 2019	<p><b>MDE received a complaint from a sponsor regarding kickbacks solicited by Feeding Our Future.</b></p> <p>MDE contacted the complainant, but they stated the original source of the complaint was not willing to speak with MDE and they did not want their name and the name of their organization to be disclosed.</p>	This was the seventh complaint MDE received involving Feeding Our Future.
 June 28, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's program implementation.</b></p> <p>The complainant stated a site sponsored by Feeding Our Future indicated that it did not require the site to retain receipts or have a menu with nutritional requirements.</p>	This was the eighth complaint MDE received involving Feeding Our Future.
 September 24, 2019	<p><b>Feeding Our Future submitted an application and budget for the 2020 CACFP program year.</b></p> <p>MDE identified a number of issues, including that Feeding Our Future:</p> <ul style="list-style-type: none"> <li>• Did not have any dedicated accounting or financial staff despite its projected growth and the amount of federal dollars it managed.</li> <li>• Planned to spend at least \$30,000 to contract with a lawyer located out-of-state to serve as a compliance manager.</li> <li>• Planned to pay significantly higher salaries to its executives and senior management than the average of comparable organizations in the region.</li> </ul> <p>MDE approved the application and budget, except for a budget item related to the compliance manager contract.</p>	<p>The individual named as Feeding Our Future's compliance manager was Feeding Our Future's counsel for the <i>Feeding Our Future v. Minnesota Department of Education</i> lawsuit, which began in late 2020.</p> <p>See Exhibit 3.1 for a complete list of MDE's concerns.</p>
 November 27, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>The complainant stated that MDE's delay in approving their organization's sites allowed Feeding Our Future to contact these sites promising larger claims on a faster timeline. The complainant stated that this was false advertising.</p>	This was the ninth complaint MDE received involving Feeding Our Future.

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Date	Event	Comments
 December 26, 2019	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>The complainant alleged that Feeding Our Future's executive director and another staff person had repeatedly visited their organization's sites with the intention of recruiting them to Feeding Our Future. MDE shared this complaint directly with Feeding Our Future, and the executive director responded in writing to the accusations made by the complainant. In June 2020, MDE provided a written response to both sponsors indicating MDE had determined there was not sufficient evidence to demonstrate that Feeding Our Future engaged in unethical recruitment practices. MDE again encouraged the two sponsors to attempt to resolve any conflicts before involving MDE.</p>	<p>This was the tenth complaint MDE received involving Feeding Our Future.</p>
 January 3, 2020	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment.</b></p> <p>The complainant stated that Feeding Our Future was aggressively recruiting their organization's sites. In response, MDE requested more information from the complainant, but it is unknown if additional action was taken.</p>	<p>This was the eleventh complaint MDE received involving Feeding Our Future.</p>
January 31, 2020	<p><b>U.S. Department of Health and Human Services declared a public health emergency due to COVID-19.</b></p>	
February 15, 2020	<p><b>IRS revoked Feeding Our Future's nonprofit status.</b></p> <p>The revocation was a result of Feeding Our Future's failure to file documentation needed to maintain its status.</p>	<p>MDE later issued a serious deficiency for this, but not until January 2021.</p>
March 11, 2020	<p><b>World Health Organization declared COVID-19 a pandemic.</b></p> <p>Soon after, USDA began issuing waivers that suspended some requirements for federal nutrition programs.</p>	<p>See Chapter 3 for our assessment of MDE's implementation of federal pandemic-era waivers.</p>
March 13, 2020	<p><b>Minnesota's Governor issued an executive order declaring a peacetime emergency in regard to the COVID-19 pandemic.</b></p> <p>This order allowed the Minnesota Department of Health to continue to provide guidance for and lead the coordination of any statewide responses to the COVID-19 pandemic. This order also allowed the Minnesota National Guard to ensure its readiness to assist as needed during the peacetime emergency.</p>	
March 15, 2020	<p><b>Minnesota's Governor issued an executive order closing all Minnesota public schools beginning on March 18.</b></p> <p>Public schools remained closed to in-person learning through the end of the 2019-2020 school year. At the beginning of the 2020-2021 school year, the majority of Minnesota public schools operated a virtual or hybrid learning model.</p>	

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Date	Event	Comments
April 2020	<b>During a virtual visit of one of Feeding Our Future's sites, MDE staff witnessed about 30 kids receiving meals in 15 minutes.</b>	Then, Feeding Our Future's executive director's phone died and they stated that within the next hour, 1,800 additional kids came when their phone was dead. We have no evidence indicating MDE investigated this irregularity.
	April 13-23, 2020	<b>Feeding Our Future submitted applications for eight sites for participation in CACFP.</b>
	April 28, 2020	<b>Feeding Our Future sent MDE a draft complaint and litigation hold.</b> Feeding Our Future stated that if the eight site applications it submitted between April 13-23 were not approved by April 30, 2020, it would file its complaint in district court.
	April 29, 2020	<b>MDE approved the eight Feeding Our Future site applications.</b> MDE approved the 8 site applications in question, along with an additional 4, for a total of 12 site applications.
	May 21, 2020	<b>Feeding Our Future applied to MDE to participate in the Summer Food Service Program (SFSP) for the 2021 program year.<sup>2</sup></b> On this application, Feeding Our Future attested that it was a tax-exempt entity when, in fact, its tax-exempt status was revoked by the IRS on February 15, 2020. The IRS posted the revocation on its website on May 11, 2020. MDE approved the application on June 30, 2020.
	June 18, 2020	<b>MDE remotely conducted a preapproval visit of Feeding Our Future for SFSP.</b> This visit resulted in findings related to all nine of Feeding Our Future's proposed SFSP sites, including that Feeding Our Future's application failed to accurately describe meal service at nearly all of its proposed sites.
June 30, 2020	<b>Feeding Our Future and MDE entered into an agreement allowing it to receive reimbursements for claimed SFSP meals and snacks.</b>	
	August 2020	<b>MDE began, but did not complete, an administrative review of Feeding Our Future's SFSP operations.</b> In October 2020, MDE conducted virtual visits at some of Feeding Our Future's sites, but MDE paused this review because, according to an MDE official, the virtual site visits "were not working."






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<sup>2</sup> SFSP program years begin on May 1 and end on April 30 of the following year. The program year is designated by the calendar year in which it ends; thus, program year 2021 began on May 1, 2020, and ended on April 30, 2021.






Date	Event	Comments
 August 31, 2020	<p><b>Feeding Our Future submitted an application and budget for the 2021 CACFP program year.</b></p> <p>MDE identified a number of issues, including that Feeding Our Future:</p> <ul style="list-style-type: none"> <li>• Hired 14 new staff without appropriate approval.</li> <li>• Lacked dedicated accounting or financial staff, despite MDE's recommendation to do so the prior year.</li> <li>• Did not provide adequate documentation and justification for hiring a compliance manager even after MDE had disapproved the expense in the prior year.</li> </ul> <p>MDE approved the application and budget, except for a budget item related to the compliance manager contract.</p>	See Exhibit 3.1 for a complete list of MDE's concerns.
October or November 2020 <sup>3</sup>	<p><b>MDE escalated concerns about Feeding Our Future to the USDA's Office of Inspector General.</b></p> <p>Primarily, MDE was concerned about Feeding Our Future's growth.</p>	
October 12, 2020	<p><b>MDE received a complaint from a sponsor alleging fraud in CACFP and SFSP.</b></p> <p>The complainant alleged that a "fraud ring" was fixated on the CACFP and SFSP. The complainant stated that it involved child-care centers, SFSP sites, at least one restaurant, and an unnamed sponsoring organization.</p>	
 November 20, 2020	<p><b>Feeding Our Future filed a lawsuit against MDE.</b></p> <p>The lawsuit, filed in Ramsey County District Court, stated that despite federal regulations requiring MDE to process applications within 30 days, it had not acted on many of Feeding Our Future's applications for more than 60 days.</p>	
 December 2020	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's management practices.</b></p> <p>The complainant alleged that Feeding Our Future was not responding to site requests to transfer to another sponsor. In response, MDE requested more information, but it is unknown what the results of the inquiry were.</p>	This was the twelfth complaint MDE received involving Feeding Our Future.
 December 11, 2020	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's management practices.</b></p> <p>The complainant reported that a group of individuals came to them and stated that Feeding Our Future "bought" their sites.</p>	This was the thirteenth complaint MDE received involving Feeding Our Future.
 December 15, 2020	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's program implementation.</b></p> <p>The complainant stated that some sites sponsored by Feeding Our Future have complained that they felt like they "were being used" by their sponsor.</p>	This was the fourteenth complaint MDE received involving Feeding Our Future.

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<sup>3</sup> The exact date of this event is unclear.

Date	Event	Comments
 December 22, 2020	<p><b>Based on the agreement of MDE and Feeding Our Future, a Ramsey County District Court judge ordered MDE to issue decisions on Feeding Our Future's CACFP and SFSP applications in a "reasonably prompt manner."</b></p> <p>The court's order mandated that if MDE received an incorrect or incomplete application, it must notify Feeding Our Future why it believed the application to be incorrect or incomplete and provide appropriate technical assistance to correct or complete the application.</p>	
 December 22, 2020	<p><b>MDE denied all 68 of Feeding Our Future's pending SFSP site applications.</b></p> <p>The denial was due to: (1) the fact that Feeding Our Future was already serving 75,000 children per day at existing SFSP sites, which exceeded the 50,000 per day limit established in federal law; and (2) MDE's determination that Feeding Our Future's site applications failed to demonstrate how it could manage a program roughly twice the size of the federal limit.</p> <p>Feeding Our Future submitted an appeal to MDE's appeal panel on January 4, 2021. On February 4, 2021, the appeal panel upheld MDE's denial of the site applications.</p>	
 December 27, 2020	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's management practices.</b></p> <p>The complainant stated that a site sponsored by Feeding Our Future reached out to them to inquire about changing their sponsorship. The site operator said they had tried reaching out to Feeding Our Future to sign the transfer request, but they had not heard back for weeks.</p>	This was the fifteenth complaint MDE received involving Feeding Our Future.
 January 19, 2021	<p><b>MDE received a complaint regarding Feeding Our Future's program implementation.</b></p> <p>A complainant stated that there were two U-Haul trucks in their parking lot giving out food items to individuals. In response, MDE requested that Feeding Our Future conduct a site visit to investigate the complaint. After conducting the site visit, Feeding Our Future's executive director reported back to MDE that the individual distributing food stated they were sponsored by another sponsor.</p>	This was the sixteenth complaint MDE received involving Feeding Our Future.
 January 15, 2021	<p><b>MDE declared Feeding Our Future seriously deficient for CACFP and SFSP.</b></p> <p>This was due to the IRS's revocation of Feeding Our Future's nonprofit status and Feeding Our Future's noncompliance with federal audit requirements. Feeding Our Future was required to respond within ten business days with a written corrective action plan. Feeding Our Future responded to the serious deficiency determination on January 26. It provided a copy of an audit report for the year ending September 30, 2019, and a copy of a letter from the IRS dated December 1, 2020, stating that Feeding Our Future was exempt from federal income tax, retroactive to February 2020.</p>	Feeding Our Future responded to the serious deficiency determination within ten business days; however, MDE indicated Feeding Our Future did not provide a corrective action plan. And, after Feeding Our Future provided the audit report, MDE found issues with it, as we discussed in Chapter 5.

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Date	Event	Comments
 January 29, 2021	<p><b>MDE received a complaint from a sponsor regarding Feeding Our Future's site recruitment practices.</b></p> <p>The complainant stated that Feeding Our Future and another sponsor had been continuously and constantly recruiting their sites to switch sponsors. The sponsor also stated that the two sponsors were spreading misinformation about the nutrition programs and their intentions. MDE indicated it would send the complaint information to Feeding Our Future and require follow-up.</p>	<p>This was the seventeenth complaint MDE received involving Feeding Our Future.</p>
 February 2, 2021	<p><b>Feeding Our Future provided a corrective action plan to MDE as required by the January 15, 2021, serious deficiency determination.</b></p> <p>The plan stated the IRS had mistakenly revoked Feeding Our Future's federal income tax exemption status, and that a single audit was completed before it was due at the end of 2020. Feeding Our Future planned to check why the audit did not appear on the Federal Audit Clearinghouse website.</p>	<p>MDE later determined the corrective action plan to be insufficient. Due to this and other issues, MDE initiated the process to terminate Feeding Our Future's participation in CACFP on March 29, 2021.</p>
February 22, 2021	<p><b>The Federal Bureau of Investigation (FBI) notified MDE of allegations it received involving Feeding Our Future.</b></p> <p>The allegations were that Feeding Our Future's executive director was (1) accepting kickbacks for participation in federal nutrition programs, (2) submitting reimbursements for meals without proper or insufficient paperwork, and (3) not providing meals they said they provided.</p>	
 March 2021	<p><b>MDE received a complaint from a Minnesota school district regarding Feeding Our Future's management practices.</b></p> <p>The school district stated that sites sponsored by Feeding Our Future were operating on Minneapolis Parks and Recreation Board land without approval. MDE sent information about the complaint to Feeding Our Future.</p>	<p>This was the eighteenth complaint MDE received involving Feeding Our Future.</p>
 March 5, 2021	<p><b>MDE sent a letter to Feeding Our Future indicating the key pieces of the single audit that were missing and requested the contact information of the audit firm.</b></p> <p>Feeding Our Future did not provide the information by the March 15, 2021, deadline.</p>	<p>Feeding Our Future's lack of response regarding the missing single audit and other issues caused MDE to issue a notice of proposed termination and disqualification on March 29, 2021.</p>
 March 24, 2021	<p><b>MDE received a complaint from an individual regarding Feeding Our Future's management practices.</b></p> <p>The individual alleged that a site sponsored by Feeding Our Future had never distributed food to children or parents. In response, MDE requested more information from the complainant, but there was no documented resolution.</p>	<p>This was the nineteenth complaint MDE received involving Feeding Our Future.</p>









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Date	Event	Comments
	<p><b>MDE initiated a process to terminate Feeding Our Future's CACFP sponsorship. MDE stated that the serious deficiencies issued on January 15, 2021, had not been fully corrected.</b></p> <p>Specifically, MDE found that (1) Feeding Our Future's written corrective action plan provided on February 2, 2021, was not sufficient; and (2) Feeding Our Future had not responded with the contact information for the auditor as requested on March 5, 2021. The date of proposed termination was set for April 30, 2021. Feeding Our Future was able to appeal within 15 days.</p>	<p>A second set of serious deficiencies was issued two days later on March 31, 2021.</p>
	<p><b>MDE issued a second set of serious deficiencies for CACFP.</b></p> <p>MDE determined Feeding Our Future was seriously deficient due to concerns about Feeding Our Future's financial viability and financial management, administrative capabilities, and program accountability. MDE indicated if Feeding Our Future did not correct the serious deficiencies by April 30, 2021, MDE would move to terminate Feeding Our Future's participation in CACFP and disqualify it from future CACFP participation.</p>	<p>MDE used this second set of serious deficiencies as grounds to deny Feeding Our Future's 2022 SFSP application. Additionally, MDE stopped paying Feeding Our Future's claims for reimbursement and issuing site IDs for Feeding Our Future in order to create new sites. Feeding Our Future challenged these actions in April 2021 court filings.</p>
<p>April 2021</p>	<p><b>MDE provided information to the FBI regarding fraud suspicions with Feeding Our Future and sites under its sponsorship.</b></p> <p>MDE believed some of Feeding Our Future's sites were submitting fraudulent documents and artificially inflating the number of individuals receiving meals and snacks in order to obtain federal funds, which were then diverted away from the nutrition program.</p>	<p>The FBI began an investigation in May 2021.</p>
	<p><b>MDE and the USDA Midwest Regional Office met about the serious deficiency process and notice of proposed termination.</b></p> <p>According to MDE, the USDA Midwest Regional Office supported its decision to stop paying Feeding Our Future's claims for reimbursement and indicated that MDE had the authority for this decision.</p>	
	<p><b>MDE sent Feeding Our Future instructions for documentation it needed to submit in response to the March 31, 2021, serious deficiencies.</b></p> <p>MDE requested meal validation documents, documents related to Feeding Our Future's operations, and a corrective action response letter.</p>	
	<p><b>Feeding Our Future appealed MDE's March 29, 2021, notice of proposed termination and disqualification of CACFP sponsorship.</b></p> <p>The notice was based on the January 15, 2021, serious deficiencies.</p>	








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Date	Event	Comments
	<p><b>Feeding Our Future filed a motion in Ramsey County District Court for a temporary restraining order and to hold MDE in contempt of court.</b></p> <p>In its request for a temporary restraining order, Feeding Our Future asserted that MDE could not lawfully withhold reimbursements. In its request to hold MDE in contempt of court, Feeding Our Future alleged that MDE's refusal to accept or process Feeding Our Future applications violated the court's December 22, 2020, order.</p>	<p>The December 22, 2020, court order stated MDE must issue a decision on Feeding Our Future's site applications in a "reasonably prompt manner." The court also directed that if an application is incorrect or incomplete, MDE must notify Feeding Our Future why it is incomplete or incorrect and provide technical assistance if appropriate.</p>
	<p><b>MDE sent Feeding Our Future instructions on how to submit documentation to support its meal claims.</b></p> <p>The documentation required for meal validation included meal and snack count records, attendance records, menus for all meals and snacks served, vendor invoices, and education and enrichment activities offered to children.</p>	<p>This meal validation requirement was a result of the second set of serious deficiencies issued on March 31. We discussed MDE's review of Feeding Our Future's meal validation documents in Chapter 5.</p>
	<p><b>Feeding Our Future notified MDE that it started uploading documentation related to MDE's decision to stop paying the organization's meal claims.</b></p>	<p>Several of the sites for which Feeding Our Future provided documentation were eventually named in federal criminal indictments.</p>
	<p><b>Ramsey County District Court heard Feeding Our Future's motion for a temporary restraining order and to hold MDE in contempt of court.</b></p> <p>The court determined that MDE's "stop pay" order was not within the scope of the existing lawsuit, and that the court therefore did not have jurisdiction over that issue. However, the court indicated that MDE's decision to stop paying Feeding Our Future's claims was "a real problem."</p>	<p>Nine days later, MDE removed its "stop pay" order.</p>
	<p><b>Feeding Our Future submitted a corrective action plan in response to the March 31, 2021, serious deficiency letter.</b></p>	
	<p><b>MDE denied all 184 pending CACFP and SFSP site applications as a result of the March 31, 2021, deficiency.</b></p> <p>MDE stated that this denial was appealable.</p>	
	<p><b>Feeding Our Future provided documentation required by the March 31, 2021, notice of serious deficiency.</b></p>	
	<p><b>MDE removed its "stop pay" order on Feeding Our Future's account within its claims processing system.</b></p> <p>MDE removed the "stop pay" order due to the court's statements on April 21, 2021.</p>	
May 2021	<p><b>FBI began an investigation into Feeding Our Future.</b></p>	

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Date	Event	Comments
	<p><b>Feeding Our Future sought timely administrative review of MDE's April 29, 2021, decision to deny 184 site applications.</b></p> <p>MDE's appeal panel conducted the review.</p>	
	<p><b>MDE received a complaint from a site regarding Feeding Our Future's management practices.</b></p> <p>The site, sponsored by Feeding Our Future, reached out to MDE to state they had not received their March reimbursement check. During this conversation, MDE noticed several irregularities between what the site stated versus what Feeding Our Future had reported, including which food program the site utilized and the site address.</p>	<p>This was the twentieth complaint MDE received involving Feeding Our Future.</p>
	<p><b>MDE received a complaint from a site regarding Feeding Our Future's management practices.</b></p> <p>The site, sponsored by Feeding Our Future, raised concerns about not being able to continue to operate with their current sponsor. During this conversation, MDE noted that the site's application stated they were operating under CACFP, whereas the site stated they were operating under SFSP.</p>	<p>This was the twenty-first complaint MDE received involving Feeding Our Future.</p>
	<p><b>Feeding Our Future provided a single audit report to MDE, as well as documentation that the audit had been submitted to the Federal Audit Clearinghouse.</b></p>	<p>We discussed issues with the audit in Chapter 5.</p>
	<p><b>MDE sent a letter to Feeding Our Future vacating the March 29, 2021, notice of proposed termination and disqualification.</b></p> <p>MDE vacated the notice of proposed termination and disqualification due to Feeding Our Future's submission of a single audit report on May 11, 2021. However, the serious deficiencies from March 31, 2021, remained in effect.</p>	<p>Additionally, this action deferred the January 15, 2021, serious deficiency, as the proposed termination and disqualification stemmed from this serious deficiency.</p>
	<p><b>MDE received a complaint from a site regarding Feeding Our Future's management practices.</b></p> <p>A site contacted MDE and raised concerns about Feeding Our Future's reimbursement practices. The site stated that Feeding Our Future contacted them trying to recruit them for CACFP and SFSP participation. Feeding Our Future stated that if the site chose to be sponsored by them, they could provide reimbursement back to October 2020. In response, MDE contacted the complainant and provided resources on other ways to participate in SFSP.</p>	<p>This was the twenty-second complaint MDE received involving Feeding Our Future.</p>
	<p><b>MDE sent its reply to the documentation Feeding Our Future provided in response to the March 31, 2021, serious deficiency letter.</b></p> <p>The letter indicated that MDE accepted all but one of Feeding Our Future's corrective actions. MDE indicated it was still waiting for Feeding Our Future's revised budget, which the organization provided on June 2.</p>	<p><i>Continued on the next page.</i></p>

	Date	Event	Comments
	June 4, 2021	<b>MDE determined that Feeding Our Future fully and permanently corrected the serious deficiencies issued on March 31, 2021, and therefore deferred the serious deficiency.</b> After this action, Feeding Our Future was no longer seriously deficient and could continue operating as normal.	
	June 10, 2021	<b>MDE approved Feeding Our Future's application for the 2022 SFSP program year.</b>	
	June 11, 2021	<b>MDE notified Feeding Our Future that it had reviewed site claim documents to validate March claims for reimbursement and that more information was required.</b> MDE stated that documentation was required by June 18, 2021, or claims would be denied.	According to an MDE official, Feeding Our Future did not respond to this request. However, as we discussed in Chapter 5, MDE did not deny or adjust downward claims that required additional supporting documentation.
	June 15, 2021	<b>MDE's appeal panel and Feeding Our Future participated in a hearing pertaining to Feeding Our Future's appeal of MDE's April 29, 2021, decision to deny 184 site applications.</b>	
	June 18 and 23, 2021	<b>Feeding Our Future and MDE participated in hearings in Ramsey County District Court regarding various motions filed by Feeding Our Future.</b> The June 18 hearing related to Feeding Our Future's motions for a temporary restraining order, to amend the complaint to add additional claims, to hold MDE in contempt of court, and to compel discovery responses. The June 23 hearing was called by the court to modify the ruling the court made during the June 18 hearing.	
	June 24, 2021	<b>MDE was held in contempt of court.</b> The court determined that MDE was in violation of the December 22, 2020, court order because it had not allowed Feeding Our Future to obtain site IDs in a timely manner. The court ordered MDE to pay Feeding Our Future \$47,500 in sanctions and legal fees.	
	June 25, 2021	<b>MDE denied all of Feeding Our Future's pending SFSP applications (15) for for-profit sites with self-vended food contracts, concluding that such an arrangement violated the federal prohibition on providing SFSP funds to a for-profit site.</b> MDE asserted that for-profit sites cannot both be a vendor and a distribution site for the federal food program. MDE denied an additional site application because the property owner stated that they had not given Feeding Our Future permission to operate there.	Feeding Our Future appealed this denial on the same day.





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Date	Event	Comments
 June 28, 2021	<p><b>MDE's appeal panel issued its final decision regarding MDE's denial of 184 CACFP and SFSP site applications.</b></p> <p>MDE's appeal panel affirmed the department's April 29, 2021, decision to deny Feeding Our Future's site applications. The appeal panel's decision was based on its determination that MDE was not required to permit program expansion during the period when Feeding Our Future failed to comply with regulatory requirements.</p>	<p>In part based on this decision, Feeding Our Future filed a second motion to hold MDE in contempt of court on July 6, 2021. And, on July 27, 2021, Feeding Our Future appealed the MDE panel's decision to the Minnesota Court of Appeals.</p>
 July 6, 2021	<p><b>Feeding Our Future filed a second motion to hold MDE in contempt of court.</b></p> <p>In part, Feeding Our Future claimed MDE took an inconsistent position during the appeal process related to the department's denials of Feeding Our Future's site ID requests.</p>	
 July 14, 2021	<p><b>MDE's appeal panel issued its final decision regarding MDE's denial of 16 SFSP site applications.</b></p> <p>MDE's appeal panel upheld the June 25, 2021, decision to deny 16 SFSP site applications. Fifteen sites were denied on the basis that for-profit sites were prohibited from serving simultaneously as the contracted food vendor and distribution site, and one on the basis that the property owner of the proposed site had not given Feeding Our Future permission to operate there.</p>	<p>On August 5, 2021, Feeding Our Future appealed the MDE panel's decision to the Minnesota Court of Appeals</p>
 July 15, 2021	<p><b>Ramsey County District Court heard and denied Feeding Our Future's second motion to hold MDE in contempt of court.</b></p> <p>The motion was denied on the basis of being premature.</p>	
 July 15, 2021	<p><b>MDE received a complaint from a site regarding Feeding Our Future's management practices.</b></p> <p>An individual contacted MDE to report that they went to a site sponsored by Feeding Our Future and found that no food was being served there. The complainant asked the staff at the site, and they knew nothing about food service at the location. In response, MDE contacted Feeding Our Future. Its executive director stated that the site MDE inquired about had changed locations effective July 1, 2021. However, after research, MDE could find no record that Feeding Our Future ever informed MDE of the change in location.</p>	<p>This was the twenty-third complaint MDE received involving Feeding Our Future.</p>
 July 27, 2021	<p><b>MDE received a complaint from a site regarding Feeding Our Future's management practices.</b></p> <p>A site, sponsored by Feeding Our Future, contacted MDE to request to be transferred to another sponsor due to Feeding Our Future's poor communication. The site stated that Feeding Our Future came to the site once to get it enrolled in CACFP, but never came again. The complainant also said Feeding Our Future was very difficult to contact when they had questions about how to operate their food program. MDE planned to contact Feeding Our Future about the complaint, but the transfer was successfully completed on July 30, 2021, resolving the issue.</p>	<p>This was the twenty-fourth complaint MDE received involving Feeding Our Future.</p>

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Date	Event	Comments
 August 2021	<p><b>MDE received a complaint from a vendor regarding Feeding Our Future's management practices and kickbacks.</b></p> <p>A vendor, who previously provided food services for a site, contacted MDE to report that Feeding Our Future had terminated the vendor's contract. The vendor stated they believed Feeding Our Future did this in retaliation when the vendor refused to provide a kickback. In response, MDE referred at least part of the complaint to Feeding Our Future.</p>	<p>This was the twenty-fifth complaint MDE received involving Feeding Our Future. MDE also received a complaint from a site serviced by this vendor (see below).</p>
 August 2021	<p><b>MDE received a complaint from a site regarding Feeding Our Future's program implementation.</b></p> <p>A site, sponsored by Feeding Our Future, contacted MDE to report an issue with a vendor caused by Feeding Our Future. The site stated that Feeding Our Future informed them their current vendor would no longer be able to service them, and promised to provide a replacement vendor. However, the complainant claimed this replacement vendor was ill-prepared and delivered spoiled food items in an unrefrigerated truck. The site reported this to Feeding Our Future, but Feeding Our Future never replaced the vendor, which left the site to find a new vendor on their own. In response, MDE referred the complaint to Feeding Our Future.</p>	<p>This was the twenty-sixth complaint MDE received involving Feeding Our Future. MDE also received a complaint from the site's vendor (see above).</p>
 August 31, 2021	<p><b>Feeding Our Future submitted an application and budget for the 2022 CACFP program year.</b></p> <p>MDE raised several concerns, including:</p> <ul style="list-style-type: none"> <li>• "Unreasonable" and noncompliant enrollment numbers for some CACFP sites.</li> <li>• Uncertainties about site compliance with attendance, occupancy limit, Minnesota Department of Health food service licensing, and meal service requirements.</li> </ul> <p>MDE approved the application and budget.</p>	<p>See Exhibit 3.1 for a complete list of MDE's concerns.</p>
 September 22, 2021	<p><b>MDE received a complaint from an individual regarding Feeding Our Future's management practices.</b></p> <p>A complaint was referred to MDE alleging that Feeding Our Future's nonprofit status had been revoked by the IRS, but that it was still receiving CACFP payments. MDE did not investigate this complaint, as this issue was part of the January 15, 2021, serious deficiency notice.</p>	<p>This was the twenty-seventh complaint MDE received involving Feeding Our Future.</p>
 October 20, 2021	<p><b>Feeding Our Future brought a motion for a temporary restraining order and injunction.</b></p> <p>Feeding Our Future alleged that an MDE staff person stole food from a Feeding Our Future site and intentionally destroyed relevant evidence. Through this motion, Feeding Our Future was seeking an order to prevent MDE staff from doing these alleged actions again. The motion was denied by the court on November 24, 2021.</p>	

*Continued on the next page.*

Date	Event	Comments
	<p><b>MDE received three complaints from an individual regarding Feeding Our Future’s management practices.</b></p> <p>The complainant reported that three sites sponsored by Feeding Our Future did not have permission to be operating in their present locations. The complainant alleged that the sites were not delivering food directly to individuals, but rather were leaving the food items in common areas creating a mess. MDE indicated that the complaint claims could not be substantiated and stated Feeding Our Future provided clarification regarding the sites.</p>	<p>This was the twenty-eighth complaint MDE received involving Feeding Our Future.</p>
	<p><b>MDE received a complaint from an individual regarding Feeding Our Future’s management practices.</b></p> <p>An individual contacted MDE to report that food was being distributed at a property they owned without their consent. The individual stated they had received numerous complaints from neighbors, including accusations of the site operators dumping milk outside of the premises. MDE stated the restaurant located at the address the individual provided was not authorized to operate as a site, and advised the complainant to take the issue up with the lease holder.</p>	<p>This was the twenty-ninth complaint MDE had received involving Feeding Our Future.</p>
	<p><b>MDE received a complaint from a site regarding Feeding Our Future’s management practices.</b></p> <p>The complainant stated they were not receiving their payments in a timely manner from Feeding Our Future, among other things. MDE referred the site to their sponsor and asked the site to stop contacting MDE until MDE had completed the investigation with the information the site had already provided.</p>	<p>This was the thirtieth complaint MDE received involving Feeding Our Future.</p>
<p>January 20, 2022</p>	<p><b>FBI executed search warrants at Feeding Our Future’s office and several other locations affiliated with the nonprofit organization. MDE terminated Feeding Our Future’s participation in CACFP and SFSP.</b></p> <p>MDE indicated the termination was based on the supporting documentation filed through the U.S. District Court, which alleged Feeding Our Future and its executive director submitted false and fraudulent claims. MDE also immediately stopped payments to Feeding Our Future. MDE stated that these actions were appealable. Feeding Our Future did not appeal any of these actions.</p>	
	<p><b>Ramsey County District Court issued an order dismissing the <i>Feeding Our Future v. Minnesota Department of Education</i> case.</b></p> <p>The parties agreed to dismiss the case without prejudice, thereby rendering ineffective the December 22, 2020, order requiring MDE to approve or disapprove Feeding Our Future’s CACFP and SFSP site applications in a “reasonably prompt manner.”</p>	

Continued on the next page.

Date	Event	Comments
February 25, 2022	<b>Feeding Our Future began the process of dissolving as an organization.</b>	
September 20, 2022	<b>U.S. Department of Justice announced federal criminal charges against Feeding Our Future's executive director and 46 other individuals.</b>	These individuals were charged with various financial crimes related to their alleged roles in a \$250 million fraud scheme to exploit both CACFP and SFSP.
October 19, 2022	<b>U.S. Department of Justice announced charges against two additional defendants.</b>	
October 28, 2022	<b>U.S. Department of Justice announced charges against an additional defendant.</b>	
March 13, 2023	<b>U.S. Department of Justice announced charges against ten additional defendants.</b>	
February 5, 2024	<b>U.S. Department of Justice announced charges against ten additional defendants.</b>	As of May 2024, a total of 70 individuals had been charged in relation to the alleged fraud. Of these 70, 18 had pleaded guilty to their charges.

Source: Office of the Legislative Auditor.



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# Appendix B: Site Applications and Litigation

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In 2020 and 2021, the Minnesota Department of Education’s (MDE’s) application process for the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) sites was scrutinized in district court as part of a lawsuit Feeding Our Future filed against MDE in November 2020.<sup>1</sup> Given that MDE’s approval of Feeding Our Future’s site applications facilitated the organization’s rapid expansion, this litigation gained added significance after the U.S. Department of Justice announced criminal charges against 47 defendants in September 2022 for their roles in allegedly defrauding the federal government and other crimes.<sup>2</sup> As such, we describe the litigation below with an emphasis on how it affected MDE’s review of Feeding Our Future’s site applications.



## Key Events in the Timeline: Feeding Our Future’s Lawsuit Against MDE

**November 20, 2020** – Feeding Our Future filed a lawsuit against MDE.

**December 22, 2020** – Based on the agreement of MDE and Feeding Our Future, Ramsey County District Court ordered MDE to issue decisions on Feeding Our Future’s CACFP and SFSP site applications in a “reasonably prompt manner.”

**June 24, 2021** – MDE was held in contempt of court and ordered to pay Feeding Our Future \$47,500 in sanctions and legal fees.

**January 27, 2022** – Ramsey County District Court issued an order dismissing the *Feeding Our Future v. Minnesota Department of Education* case.

See Appendix A for more information.

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## Site Application Process

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For a site to participate in CACFP or SFSP, a sponsor must submit an application on its behalf to MDE for approval.<sup>3</sup> MDE’s site application process has two parts: an initial review of a potential site’s eligibility and a more detailed review of information provided on a site application.

The process begins when a sponsor requests a site ID.<sup>4</sup> When MDE receives a site ID request, it confirms the site’s eligibility to participate under federal regulations by identifying its exact geographic location and determining whether the entity (1) is located in a low-income area or serves a sufficient number of individuals from

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<sup>1</sup> See Chapter 1 for a description of CACFP and SFSP.

<sup>2</sup> U.S. Department of Justice, Office of Public Affairs, *PRESS RELEASE: U.S. Attorney Announces Federal Charges Against 47 Defendants in \$250 Million Feeding Our Future Fraud Scheme* (Washington, DC, September 20, 2022), <https://www.justice.gov/opa/pr/us-attorney-announces-federal-charges-against-47-defendants-250-million-feeding-our-future>, accessed January 17, 2024.

<sup>3</sup> 7 *CFR*, secs. 225.6(c)(2)(iii), (c)(3)(ii), and (g); and 226.16(b)(2) (2023).

<sup>4</sup> A site ID defines the latitude and longitude of the site so that MDE can ensure that it is not already sponsored and, for some sites, determine if the site is eligible due to its location in a low-income area. The ID also serves as an organization ID for payments, indicates whether the site is a school, and is linked to the site’s street address.

low-income households; (2) is a nonprofit organization or certain type of for-profit entity; (3) is properly licensed, when appropriate; and (4) is not already sponsored by another organization. Once MDE determines that the site is eligible, the department issues a site ID.

The second step of the process begins when the sponsor completes an application for the site and provides information about the meals and snacks the site will serve, methods of meal and snack preparation, and catering contracts, among other things. For a site to receive final approval, MDE must confirm that the sponsor requesting the site has corrected any findings discovered during administrative reviews, is not currently subject to administrative action due to deficiencies in its program administration, and has a CACFP or SFSP program agreement with MDE that matches the program to be operated at the site.

## Litigation with Feeding Our Future

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Beginning in November 2020 and until the organization's termination from the program in January 2022, Feeding Our Future challenged MDE's handling of its site applications in court, and questioned the legality of MDE's site application review process more generally.

MDE rejected Feeding Our Future site applications for several reasons, including:

- The proposed site or Feeding Our Future did not meet the eligibility criteria found in federal law.
- The site application contained errors or was incomplete.
- Feeding Our Future failed to provide complete and accurate information requested during the application process.
- The approval of a proposed site would exceed the size limits.<sup>5</sup>

In April 2020, Feeding Our Future initiated the site application process for eight proposed CACFP after-school sites. In later district court filings, Feeding Our Future claimed that MDE had refused to process applications for these sites, which led Feeding Our Future to threaten legal action. MDE ultimately approved these applications later in April, and Feeding Our Future did not file a legal complaint at that time. However, Feeding Our Future would sue MDE later in the year.

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<sup>5</sup> By law, MDE “must not approve any sponsor to operate more than 200 sites or to serve more than an average of 50,000 children per day” (7 *CFR*, sec. 225.6(b)(6) (2021)). Although federal regulations permit MDE to grant exceptions to this requirement, MDE confirmed that it has never done so. MDE's CACFP program agreement with Feeding Our Future states that “MDE reserves the right to impose program size limitations for a Sponsoring Organization based on program size, staffing patterns, program experience and organization” (Minnesota Department of Education, *Child and Adult Care Food Program Agreement*, signed July 27, 2018). MDE's SFSP program agreement with Feeding Our Future did not contain similar language.

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### Feeding Our Future sued MDE in November 2020 alleging that the department was delaying its approval of the organization’s site applications beyond time limits found in federal law.

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According to Feeding Our Future, beginning in September 2020 and throughout 2021, MDE took several months to review some of Feeding Our Future’s site applications. In November 2020, Feeding Our Future filed a lawsuit in Ramsey County District Court, alleging that MDE had “consistently refused to allow Feeding Our Future to submit applications to open new meal sites.”<sup>6</sup>

Specifically, Feeding Our Future claimed that between September 8, 2020, and November 20, 2020, MDE refused to issue site IDs to 41 proposed CACFP and SFSP locations and failed to act on another 10 proposed sites for 30 days or more. MDE denied the allegations and stated that many pending applications remained pending because Feeding Our Future had failed to provide MDE with complete and accurate information about the sites. According to Feeding Our Future, after the organization and MDE agreed to work together to resolve their issues in a November 24, 2020, conference call with a district court judge, MDE approved 39 of the 51 SFSP site applications by December 9, 2020. Two weeks later, as shown in Exhibit B.1, MDE acted on another batch of site applications by denying nearly 70 SFSP sites due to limitations in federal law on the number of children SFSP sponsors can serve in a single day.

The resolution of some of the pending site applications did not prompt Feeding Our Future to drop its suit. On December 22, 2020, using language agreed upon by Feeding Our Future and MDE, a Ramsey County district court judge issued an order specifying how MDE must process Feeding Our Future’s complete and correct site applications moving forward. Key requirements of the order are in the box at right.

Over the following year, Feeding Our Future repeatedly referenced this order in filings asking the court to address MDE’s unwillingness to issue site IDs and the department’s delays in making decisions on submitted applications. For example, in March 2021, MDE stopped issuing Feeding Our Future site IDs due to an ongoing administrative action against the organization for its failure to meet CACFP performance standards. After receiving notice of MDE’s decision, Feeding Our Future filed a motion seeking to hold MDE in contempt of court, arguing that MDE’s decision to stop processing site applications was a violation of the district



#### Court Ordered Site Application Process Requirements

MDE must:

- Approve or disapprove complete and correct site applications in a **reasonably prompt** manner.
- **Provide notification** of why it believes a site application is incomplete or incorrect.
- **Provide technical assistance** needed to make site applications complete and correct.

— Order, Ramsey County District Court, December 22, 2020

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<sup>6</sup> Complaint, November 20, 2020, *Feeding Our Future v. Minnesota Department of Education*, 62-CV-20-5492 (Minn. Dist. Ct.), 6. In addition to claims based on federal program regulations, Feeding Our Future asserted that MDE’s delayed processing of site applications and the requirements of its site application process violated state human rights laws, constituted a breach of contract between the department and the organization, interfered with the organization’s contracts with its sites and food vendors, and violated the organization’s constitutional rights.

court’s December 2020 order that MDE must approve or disapprove Feeding Our Future’s site applications in a “reasonably prompt manner.”<sup>7</sup> During an April 21, 2021, hearing about Feeding Our Future’s motion, the judge stated that Feeding Our Future must be allowed to submit site applications, MDE must issue site IDs even if it believed the full site application would be denied, and MDE must promptly approve or disapprove any submitted applications in compliance with the court’s December order.

A week later, as shown in Exhibit B.1, MDE denied 184 CACFP and SFSP site applications. MDE denied 149 of the 184 proposed sites without issuing the proposed location a site ID.

### Exhibit B.1

#### Between December 2020 and December 2021, MDE denied around 280 of Feeding Our Future’s site applications.

Date of Site Application Denial	Number of Sites Denied	Reason for Denial and Subsequent Events
December 22, 2020	68 SFSP sites	<p>MDE denied the site applications because:</p> <ul style="list-style-type: none"> <li>Existing Feeding Our Future SFSP sites were serving 75,000 children per day at the time of application, a number that exceeded the 50,000 per day limit established in federal law.</li> <li>Feeding Our Future’s site applications failed to demonstrate the organization’s capability to manage a summer food service program roughly twice the size of the federal limit.</li> </ul> <p>Feeding Our Future submitted an appeal to MDE’s appeal panel. The appeal panel upheld MDE’s denial of the site applications.</p>
April 29, 2021	184 CACFP and SFSP sites (149 of 184 proposed sites were denied site IDs)	<p>MDE denied the site applications:</p> <ul style="list-style-type: none"> <li>In an effort to comply with a judicial order.</li> <li>Because Feeding Our Future was ineligible to sponsor additional sites due to its failure to correct serious deficiencies in its administration of CACFP and SFSP.</li> </ul> <p>Feeding Our Future submitted an appeal to MDE’s appeal panel. The appeal panel upheld MDE’s denial of the site applications. In July 2021, Feeding Our Future appealed the MDE panel’s decision to the Minnesota Court of Appeals. Feeding Our Future argued that MDE violated federal regulations and acted arbitrarily and capriciously by (1) using a two-step application process to prevent 144 sites from submitting complete applications by not issuing them site IDs; and (2) denying site IDs on the basis of Feeding Our Future’s serious deficiencies. After a federal investigation into Feeding Our Future’s alleged role in the fraud scheme became public and MDE terminated the organization’s participation in CACFP and SFSP, the court of appeals dismissed Feeding Our Future’s appeal as moot.</p> <p>Feeding Our Future also referenced MDE’s April 2021 site application denials in briefs it filed to support its previous motions to (1) hold MDE in contempt for failing to process site applications in a reasonably prompt manner, and (2) compel MDE to issue requested site IDs. In June 2021, the court held MDE in contempt of court.</p>

*Continued on the next page.*

<sup>7</sup> Notice of Motion and Motion for an Emergency Temporary Restraining Order and Order for Contempt of Court, April 13, 2021, *Feeding Our Future v. Minnesota Department of Education*, 62-CV-20-5492 (Minn. Dist. Ct.).

Date of Site Application Denial	Number of Sites Denied	Reason for Denial and Subsequent Events
June 25, 2021	16 SFSP sites	<p>MDE denied 15 of the site applications because the proposed for-profit sites would serve as both food distribution sites and food vendors for Feeding Our Future, contrary to updated U.S. Department of Agriculture (USDA) guidance.</p> <p>Feeding Our Future submitted an appeal to MDE's appeal panel. The appeal panel upheld MDE's denial of the site applications. In August 2021, Feeding Our Future appealed the MDE panel's decision to the Minnesota Court of Appeals. In its brief in support of its appeal, Feeding Our Future asserted that the MDE appeal panel's decision relied on misrepresentations by the department to reach its decision, and suffered from procedural defects. After a federal investigation into Feeding Our Future's alleged role in the fraud scheme became public and MDE terminated the organization's participation in CACFP and SFSP, the court of appeals dismissed Feeding Our Future's appeal as moot.</p>
December 3, 2021	13 CACFP sites	MDE denied the site applications because planned meal types and snacks would prevent the proposed for-profit sites from meeting eligibility requirements.

Source: Office of the Legislature Auditor, analysis of Minnesota Department of Education documents and relevant Ramsey County District Court filings.

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### **In June 2021, MDE was held in contempt of court for failing to comply with a December 2020 order.**

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During an April 30, 2021, hearing, the district court judge presiding over Feeding Our Future's lawsuit expressed concern that MDE's recent denials of Feeding Our Future's site applications may not have complied with the December 2020 order. Specifically, the judge warned that:

- MDE's denial of 149 site IDs was equivalent to preventing Feeding Our Future from submitting a site application rather than, as argued by MDE, a site application denial as the first step of the site application process.
- MDE had not provided a specific reason for denying each individual site.
- The corrective actions MDE proposed to Feeding Our Future to resolve serious deficiencies in the organization's program were not equivalent to providing the technical assistance needed to make the organization's applications complete, as required by the court's order.

Given these concerns, the judge ordered MDE to provide evidence and argument to show that it had complied with the December 2020 order, such that it should not be held in contempt of court.

On June 24, 2021, after two hearings on the matter, the district court issued an order finding MDE in contempt. The district court found that MDE failed to provide an adequate justification for the amount of time it took to consider site ID requests. The court also concluded that, in the absence of adequate justification, MDE's delay in

issuing site ID's was unreasonable and violated the court's December 2020 order to act on Feeding Our Future's site applications in a "reasonably prompt manner." On that basis, the judge found MDE in contempt and imposed monetary sanctions of \$35,750 to ensure the department would comply with the December 2020 order and any future court orders. The court also ordered MDE to pay an additional \$11,750—an amount that MDE and Feeding Our Future agreed was reasonable—towards attorneys' fees incurred by Feeding Our Future in bringing motions for contempt.

In compliance with the court's December 2020 order, by July 2, 2021, MDE informed Feeding Our Future that it would process 143 of the 149 site ID requests that it had denied on April 29, 2021, and issue site IDs to eligible sites. Feeding Our Future would then be able to complete the site applications, and MDE would decide to deny or approve the sites on the merits of their applications. By July 13, 2021, MDE had issued site IDs to 128 of the 143 sites that had previously been denied site IDs and was collecting additional information about the remaining 15 sites without IDs. By the same date, of the 79 site applications with site IDs that also included required documentation (such as a meal plan), MDE had approved 5, denied 0, and was requesting clarification for 1. MDE promised to process the remaining applications "as quick as possible."<sup>8</sup>

In addition to challenging MDE's delays in issuing site IDs and the pace at which the department reviewed site applications, Feeding Our Future challenged several other department actions in court. For example, Feeding Our Future alleged that MDE violated federal law when it changed the end dates on several approved site applications without explanation in order to shorten their program participation. Feeding Our Future claimed MDE altered the site applications instead of using the termination process as a way to deprive the organization of the right to appeal. As we discussed in Chapter 5, Feeding Our Future challenged MDE's decision to withhold payments from the organization until it had provided additional documentation to support its meal claims. After a district court judge commented that MDE's decision to withhold payments seemed inconsistent with federal regulations, MDE resumed paying Feeding Our Future despite receiving only some of the requested meal claims documentation (and without a formal order from the court to resume payments).

As we discussed above, Feeding Our Future's central complaints against MDE focused on the department's alleged noncompliance with specific federal nutrition program regulations. However, the organization also asserted other claims against MDE, including (1) breach of contract between MDE and Feeding Our Future; (2) interference in the contracts between Feeding Our Future and its sites; (3) discrimination against Feeding Our Future on the grounds of race, national origin, color, and religion; (4) denial of federal and state due process; and (5) defamation of Feeding Our Future.<sup>9</sup>

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<sup>8</sup> Third Declaration of [MDE staff person], July 13, 2021, *Feeding Our Future v. Minnesota Department of Education and [Assistant Commissioner of Education]*, in his official capacity, 62-CV-20-5492 (Minn. Dist. Ct.), 4.

<sup>9</sup> During the course of this litigation, Feeding Our Future sought to add a number of claims against MDE to those it first asserted against MDE. These claims included fraud, civil theft, conversion, and abuse of the legal process; the court denied Feeding Our Future's motion to add these claims to their suit. Feeding Our Future also asserted a defamation claim against an MDE staff person in their personal capacity, though Feeding Our Future agreed to drop that claim soon thereafter. From the claims Feeding Our Future sought to add to their suit, the court only permitted the claim of defamation against MDE and an MDE staff person, acting in their official capacity, to move forward.

These claims were never adjudicated by the court. As we discussed in Chapter 2, on January 20, 2022, the Federal Bureau of Investigation executed search warrants on Feeding Our Future's office and other properties associated with the organization and its staff. A week later, the court adopted the stipulation of MDE and Feeding Our Future for the dismissal of the district court proceeding without prejudice.<sup>10</sup>

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<sup>10</sup> In December 2022, MDE sued Feeding Our Future and its executive director in Ramsey County District Court alleging that the organization's litigation against MDE, which we describe above, was an abuse of the legal process and malicious prosecution (Complaint, February 16, 2023, *Minnesota Department of Education v. Feeding Our Future and Executive Director*, 62-CV-23-863 (Minn. Dist. Ct.)). MDE was seeking to recover nearly \$584,000 in attorneys' fees and other costs related to defending itself against Feeding Our Future's lawsuit and a court order to prohibit Feeding Our Future from suing MDE in the future. In January 2024, the court dismissed the malicious prosecution claim but permitted the abuse of process claim to proceed.



OLA





June 7, 2024

Ms. Judy Randall  
Legislative Auditor  
Office of the Legislative Auditor  
658 Cedar St., Room 140  
St. Paul, MN 55155

Auditor Randall,

Thank you for the opportunity to comment on the Office of the Legislative Auditor's ("OLA") special review of the Minnesota Department of Education's oversight of the nonprofit organization Feeding Our Future ("FOF"). The Minnesota Department of Education (the "Department" or "MDE") is committed to program integrity and strong fiscal oversight of our programs and the important work we do on behalf of children and adults across the state. What happened with Feeding Our Future was a travesty – a coordinated, brazen abuse of nutrition programs that exist to ensure access to healthy meals for low-income children. The responsibility for this flagrant fraud lies with the indicted and convicted fraudsters.

MDE appreciates the time and effort that the OLA has put into the review of MDE's oversight of federal nutrition programs, as well as the collegial and collaborative process through which OLA has engaged MDE. OLA has provided helpful suggestions in this report and MDE appreciates the detailed attention to MDE's practices. But MDE disputes the OLA's characterization regarding the adequacy of MDE's oversight – MDE's oversight of these programs met applicable standards and MDE made effective referrals to law enforcement. The fraud here was perpetuated by a criminal enterprise that capitalized on risk created by a global pandemic.

MDE's oversight of this program is frequently reviewed, and we view these reviews as useful continuous improvement tools. This special review validates many of MDE's own observations made over the past two years as the Department sought to learn from this experience and build safeguards to prevent future issues. MDE did not wait for this report to take action; MDE has proactively made changes for multiple years to enhance program oversight and integrity.

This response will proceed in two parts: first, I want to highlight the efforts MDE staff undertook to enforce program requirements and bring an end to the fraud in these programs. Second, Part II will highlight a series of steps MDE, as a continuous improvement agency, has taken to strengthen our ability to ensure program integrity in these and other programs.

### **Part I: MDE's Oversight and Accountability Efforts**

During the trial in which five defendants have been found guilty on the majority of charges of fraud and other crimes, FBI Agent Jared Kary said that the FBI "dug into the case after [MDE] reported suspected fraud in spring

2021.”<sup>1</sup> Both prior to my appointment as commissioner, and no doubt after I leave, MDE stood and will stand ready to protect state and federal funds and to ensure those programs are administered with integrity. The arc of MDE’s efforts to oversee and hold sponsors such as Feeding Our Future accountable reflects the dedication of MDE’s staff to ensuring that these program funds are used as intended to benefit children.

Agent Kary’s court room testimony highlights that MDE’s oversight of FOF and efforts to work in partnership with federal investigators were central to the discovery of and termination of the ongoing fraud. The Department’s approach, as evidenced by this report and other reviews, met applicable federal standards, and in many cases exceeded those standards.

The story of MDE’s oversight of Feeding Our Future began before FOF existed, when MDE denied the nonprofit organization Partners in Nutrition (“PIN”)’s application to expand to be an unaffiliated sponsor for multiple sites, on the basis of financial viability. PIN appealed to the Minnesota Court of Appeals, which ruled that MDE did not have the authority to apply financial viability standards more stringent than the “relatively minimal standard” in federal regulations.<sup>2</sup>

Feeding Our Future began operating the Summer Food Service Program in June 2020. Upon receiving claims for that summer, MDE observed rapid growth in the number of community sites and new sites sponsored by Feeding Our Future as well as an exponential increase in the rate of meal reimbursement claims and dollars flowing to this sponsor. As required by federal regulations, MDE staff repeatedly worked with Feeding Our Future representatives to understand the increased demand. As the OLA report observes, MDE made extensive findings about FOF’s shortcomings. In response to these findings, and in consideration of the PIN decision, MDE staff also reached out to the USDA Midwest Regional Office multiple times seeking advice and support regarding this notably rapid growth, and how to best exercise oversight in light of it. In October 2020, MDE escalated the issue to the USDA Office of the Inspector General, but that did not resolve the issue either.

After MDE raised concerns about the number of new sites sponsored by Feeding our Future and the unexplained increase in meal reimbursement claims, Feeding Our Future filed a lawsuit against MDE in November of 2020, challenging MDE’s authority to regulate the program.

MDE stopped approving Feeding Our Future’s new Summer Food Service Program (“SFSP”) applications in December 2020, denying dozens of Feeding Our Future site applications that month. In January 2021, MDE

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<sup>1</sup> Kelly Smith, FBI agent reveals how the agency's massive fraud investigation began in Feeding Our Future trial (May 1, 2024), <https://www.startribune.com/fbi-agent-reveals-how-the-agencys-massive-fraud-investigation-began-in-feeding-our-future-trial/600363160/>.

<sup>2</sup> *Partners in Nutrition's Appeal of Disapproval of Site Expansion in CACFP Program*, 904 N.W.2d 223, 232–33 (Minn. Ct. App. 2017) (“Federal regulations establish a relatively minimal standard for financial viability. MDE does not have the discretion to create its own unduly restrictive test. For each of the foregoing reasons, we conclude that MDE erred by applying a legal standard separate from, and more stringent than, the applicable federal regulations”).

declared Feeding Our Future seriously deficient due to incomplete financial audits and a lapsed non-profit status with the IRS.

In spring of 2021, MDE again declared Feeding Our Future seriously deficient for non-conformance with USDA Child and Adult Food Care Program (“CACFP”) Performance Standards and denied numerous site applications. MDE also issued a ‘stop pay’ order that halted all payments to Feeding our Future to give MDE time to verify that all meal claim reimbursements submitted were valid and allowable.

MDE also reported concerns to the FBI. MDE remained in regular contact with the FBI and later, the U.S. Attorney’s Office, for the duration of Feeding Our Future’s operations, through the FBI’s raids on Feeding our Future locations, and through the U.S. Attorney’s announcements of criminal indictments.

Feeding Our Future continued to fight MDE’s authority to deny new site applications in court. On April 21, 2021, a judge warned MDE that it did not have the authority to stop payment to Feeding Our Future and would need to continue to pay Feeding Our Future’s claims or face possible contempt charges. MDE was then found in contempt of court and assessed fines of over \$40,000 for having attempted to impose oversight that the court found MDE did not have. That summer and fall, Feeding Our Future continued to abuse the court to perpetuate its massive fraud scheme through additional motions for injunction and contempt.

MDE continued efforts to safeguard program integrity through available mechanisms, including regular reporting to appropriate law enforcement entities and cooperation with those investigations. MDE’s reporting and adherence to requests from the FBI led to 70 criminal indictments, 18 of which have since pled guilty to, and five of which have been found guilty of, charges such as wire fraud and other financial crimes. MDE utilized a wide array of tools, including federal law enforcement, to protect this program.

MDE took steps to assert program controls it deemed necessary to ensure program integrity, and yet MDE was met with aggressive lawsuits challenging its authority to do so. As the OLA report recognizes, criminals took advantage of the program even though MDE met or exceeded relevant federal regulations. At all times MDE made its best judgments about its authority for oversight in the context of relevant legal requirements and pushback.

MDE is committed to strong oversight and program participation, and, to that end, the Department looks forward to incorporating many of the recommendations by the OLA. But to be clear – the blame for this once in a lifetime, brazen, flagrant fraud lies with the indicted and convicted fraudsters, not individual food program personnel who have dedicated their careers to feeding children and who tried to stop this fraud.

## **Part II: Forward-looking Solutions**

The program that operated during OLA's review was operating during an unprecedented global pandemic to the best of its ability. The lessons learned from that time period have been embraced by MDE. We have independently implemented changes to strengthen the Department's oversight:

## **Office of Inspector General**

In the 2023 legislative session, MDE proposed and established an Office of Inspector General (“OIG”) in statute to assist the Department with protecting the integrity of the Department and the state by detecting and preventing fraud, waste, and abuse in department programs. MDE led this initiative and ultimately received \$2 million to establish and fund the operations of the office. As the OLA notes, in 2024 we proposed additional changes to clarify and expand the powers of the OIG to ensure it has the investigatory and enforcement tools needed to fulfill its important functions, which the legislature passed in May 2024.

## **General Counsel’s Office**

In late 2021, MDE recognized a need for full time, dedicated legal counsel. This position was designed to provide the agency in-house counsel and legal guidance as the agency implemented both new and existing programs. After my appointment as Commissioner, I made the determination that the office needed additional resources, including the creation of a Deputy General Counsel position. In light of the work that MDE does and the need to undertake that work with fidelity to the law, I determined that it was imperative that the agency’s legal counsel and advice flow directly to leadership. For that reason, I made the decision to reorganize my leadership team and have the General Counsel report directly to me.

## **Updated Fraud Reporting Policy and Training**

In the fall of 2022, MDE updated its fraud reporting policy, and on December 1, 2022, MDE’s General Counsel provide training to the entire MDE staff on the updated policy and MDE staff’s general reporting requirements under Minnesota state statutes.

## **Risk Management and Audit Personnel**

MDE sought and received funds from the legislature to support risk management and an additional auditor in the school finance division. This will ensure that MDE is not just reacting to potential situations, but proactively detecting problems in order to prevent fraud, waste, and abuse.

## **Outside Financial Review of Sponsors**

In 2022, MDE also contracted with a national firm, MH Miles, to conduct in-depth finance reviews of certain community nutrition sponsors. In addition to conducting the reviews of certain sponsors, MDE has engaged in conversations with MH Miles about best practices for these reviews. One change MDE implemented in light of these learnings is stricter timeframes regarding corrective action, review, response and documentation collection.

## **Updated Technology and Tracking Tools**

The Cyber-Linked Interactive Child Nutrition System (CLiCS) is the main technology system of the MDE Nutrition Program Services division and the USDA Child Nutrition programs administered by MDE. MDE is currently investing millions into a multi-year project to provide updates and improvements to CLiCS, which will significantly enhance oversight by allowing for improved and more readily available sponsor submitted data reporting, including vended meal contracts, estimated reimbursements, and changes to applications. This will

allow staff to more easily identify risk as opposed to manually checking items. The project is being conducted in two phases with an estimated completion date of December 31, 2025.

## **Nutrition Program Statutory Changes**

In 2023, MDE proposed significant statutory changes to further increase our oversight tools and frameworks for the CACFP and SFSP programs, which passed in the 2023 legislative session. These included four categories of changes:

- (1) Training requirements for organizations and staff applying to MDE-operated nutrition programs;
- (2) Financial viability requirements for sponsor applicants, including proof of existence for at least one year, the most recent tax return, profit and loss statement and balance sheet or similar, and evidence that at least ten percent of the organization's operating revenue comes from sources other than nutrition programs;
- (3) Limits on the number of times a site may transfer between sponsor organizations in a year; and
- (4) Location and proximity restrictions to ensure multiple sites are not, with limited exceptions, within a certain distance of each other.

## **Conclusion**

Within days of my appointment as Commissioner in January 2023 I convened members of MDE leadership to help me understand what happened with Feeding our Future, what MDE learned, and what MDE needed to do to ensure it has appropriate safeguards in place. Shortly thereafter, in one of my first actions as Commissioner, I came before members of the House and Senate related to another OLA review and shared that my approach as Commissioner of MDE would be oriented towards accountability and continuous improvement. As discussed in this response, MDE has been intentional and focused on accountability and working to find agency-wide solutions to enhance program integrity and strong fiscal oversight.

I would like to thank Auditor Randall, and Katherine Theisen, Director of Special Reviews, for the work their team has put into this special review. The Department looks forward to making changes outlined in the report to help ensure that Minnesota continues to be the best state in the country for children to grow up in regardless of race, ethnicity, religion, economic status, gender identity, sexual orientation, disability, or zip code.

Sincerely,



Willie L. Jett II  
Commissioner  
Minnesota Department of Education



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