

Section 3, Civil Rights & Confidentiality

Update Guide

August 12, 2020

Created a new *Administrator's Reference Manual (ARM), Section 3, Civil Rights & Confidentiality* which incorporates guidance from the previous *Section 4A, Protecting Confidential Information* and the civil rights guidance previously located in *Section 19, Other Operational Issues*. Updated all *Administrator's Reference Manual (ARM)* section references.

Clarified information on the following topics:

- Contracting entity (CE) compliant form and procedure
- Gender separation
- Records retention

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Contact Information for the

Texas Department of Agriculture (TDA), Food and Nutrition

When contacting TDA by phone, Contracting Entities (CEs) need to have their CE Identification Number (CE ID) (and site ID, if applicable). CEs should include their name and CE ID (and the site name and ID if applicable) in all communication or documentation.

General Contact Information

Physical Address	Mailing Address
1700 N. Congress, 11th Floor, Austin, TX 78701	PO Box 12847, Austin, TX 78711-2847
Phone 877-TEX-MEAL, (877) 839 -6325	Email Contact SquareMeals@TexasAgriculture.gov
Fax (888) 203-6593	Website www.SquareMeals.org

Questions about Program Applications

Child & Adult Care Food Program

CACFP.BOps@TexasAgriculture.gov

National School Lunch Program, School Breakfast Program, & Special Milk Program

NSLP-SBP.BOps@TexasAgriculture.gov

Seamless Summer Option

SSO.BOps@TexasAgriculture.gov

Summer Food Service Program

SFSP.BOps@TexasAgriculture.gov

Questions about Program Flexibility

SNPWaivers@TexasAgriculture.gov for questions about

- Breakfast Waiver
- Child Nutrition Program Requirement Waivers
- Gender Exception
- Hiring Standards, CEs with Less Than 500 Students
- Lunch Mealtime
- Paid Lunch Equity (not currently available)
- RCCI Age/Grade Group Meal Pattern
- Seamless Summer Operation (SSO) Age/Grade
- Summer Mandate
- Technology-Based Confirmation
- Universal Breakfast Mandate
- Vending Machine to Dispense Reimbursable Meals

Nutrition@TexasAgriculture.gov for questions about

- Milk Substitute Notification

Questions about Program Operation

USDA Foods Operations

CommodityOperations@TexasAgriculture.gov

Community Operations (Child & Adult Care Food Program & Summer Food Service Program)

Community.Ops@TexasAgriculture.gov

School Operations (National School Lunch Program, School Breakfast Program, & Special Milk Program)

School.Operations@TexasAgriculture.gov

Texas Eligibility List Management System (Texas ELMS)

DirectCertification@TexasAgriculture.gov

Farm Fresh Initiative (Local Products)

FarmFresh@TexasAgriculture.gov

Questions about Financial Issues

Capital Expenditures

NSLP-SBP.BOps@TexasAgriculture.gov

Claims

BCT.BOps@TexasAgriculture.gov

Procurement, Including Sole Source and Emergency Procurement

CE.ProcurementReviews.BOps@TexasAgriculture.gov

Excessive Balance Plan

School.Operations@TexasAgriculture.gov

Questions about USDA Foods

USDA Foods Carryover Inventory

CommodityOperations@TexasAgriculture.gov

USDA Foods Transfer

CommodityOperations@TexasAgriculture.gov

June 22, 2020

Civil Rights & Confidentiality

School Nutrition Programs (SNPs) are designed and funded to provide nutritional meals to students. Contracting entities (CEs) and CE staff are expected to operate these programs in a manner that protects the civil rights and confidential information of program participants and staff.

Guidance in this section applies to the following programs:

- National School Lunch Program (NSLP)
 - Afterschool Care Program (ASCP)
 - Seamless Summer Operation (SSO)
 - Fresh Fruit and Vegetable Program (FFVP)
- School Breakfast Program (SBP)
- Special Milk Program (SMP)

Guidance in the following *Administrator's Reference Manual (ARM)* sections will also assist the CE in protecting confidential information:

- *Section 2, Program Application & Agreement*
- *Section 4, Eligibility Determination*
- *Section 5, Special Provision Options*
- *Section 6, Verification of Eligibility*

Definitions for This Section

For this section, the following definitions provide information that may assist CEs:

Confidential Information	Information that contains personal information on program participants and the families of program participants, including, but not limited to, eligibility status, financial information, and personal identification numbers such as social security numbers.
Ethics	Principles of conduct governing and guiding an individual or a group.
Procedures	Processes, protocols, plans, standards of behavior, expectations, or any other written method of describing actions staff are to take related to specific events or financial transactions. For this section, the word procedure is used to refer to all of these types of documents.

Civil Rights

Under USDA regulations, contracting entities (CEs) must assure that school nutrition program (SNP) benefits are made available and provided to all eligible individuals without discrimination on the basis of

1. Age
2. Color
3. Disability
4. National origin

5. Race
6. Sex (gender)

Therefore, CEs must not separate or segregate students or provide different meal services based on age, color, disability, national origin, race, and gender.

Gender Separation Exception

In specific circumstances, CEs may request an exception to the gender segregation prohibition. CEs may apply for an exception if the following circumstances exist:

1. Meal service occurs at religious institutions operating under the (a) dictates (laws or decrees) of the religion with which they are affiliated and (b) religious doctrines prohibit mixing or co-mingling different genders.
2. Meal service occurs at juvenile correctional facilities where combining the members of opposite gender would present a potential safety risk (i.e., juvenile detention centers where genders are separated for safety).
3. Meal service occurs at facilities that fully separate by gender as part of their normal operations (summer camps or conferences where gender separation is essential to the program's design, i.e., gender-based conferences or summer programs).

To be approved for this exception, a CE must submit the *Gender Separation Exception Request* form which is located in Texas Unified Nutrition Programs System (TX-UNPS) on the Application, Download Forms page, *SNP-000 Request for Exemptions/Waivers for Program Operation*. The form is submitted electronically as described on the form.

Communication about Program Availability

The CE must ensure that participants are provided information about school meal program benefits and services, nondiscrimination policy, and all significant changes in existing requirements that pertain to program eligibility and benefits. This may be done through a news or media release, [student/parent handbook](#), and letters to parents. However, CEs must also send a household meal application to the parents or guardians of each student enrolled who is not predetermined to be eligible. CE's may also involve local minority and grassroots organizations in sharing this information.

Right to Not Participate

Just as the civil rights requirements protect all students participating in SNPs from discrimination, it also protects the rights of any student who chooses not to participate. Students cannot be required to participate in the SNP. Households cannot be required to complete a household meal application.

Nondiscrimination Statement

CEs must include the nondiscrimination statement on all forms of communication and printed program information that are sent to or shared with students and student households. This includes, but is not limited to, menus, notifications, letters, and household meal applications. If a CE uses a vendor or food service management company (FSMC), the CE needs to ensure that

the vendor or FSMC includes the required nondiscrimination statement on meal and menu signage and informational documents.

Signage in the Meal Service Area

CEs use a variety of signage strategies to communicate information about reimbursable meals in and around the meal service area.

Signage Not Related to the SNP

Inspirational or message posters that do not provide information related to the SNP, the meal service, or menu choices are not required to include the nondiscrimination statement.

The following guidance will assist CEs in knowing how to place the nondiscrimination statement on signage that communicates information about a reimbursable meal:

- If the CE uses one main sign to communicate the options for a reimbursable meal, that sign must have the nondiscrimination statement.
- If the CE uses a main sign at the beginning of the line and multiple smaller signs placed strategically in targeted service areas, the main sign must have the nondiscrimination statement. The other signs may have the nondiscrimination statement.
- CEs that use an electronic message board to display the menu must also ensure that the nondiscrimination statement is posted. However, the location of the message board may make placement of the nondiscrimination statement difficult or may not be readable because the placement is too far above the floor. In these cases, the CE must ensure that the nondiscrimination statement is placed in a location near the service line where all students are able to see it.

If CEs have additional questions about whether signage needs the nondiscrimination statement, they should contact their education service center (ESC).

The nondiscrimination statement is issued by the United States Department of Agriculture (USDA), and CEs must include the statement in its entirety. USDA provides this statement in English and Spanish.

English:

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form*, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Spanish:

For all other FNS nutrition assistance programs, State or local agencies, and their subrecipients, must post the following Nondiscrimination Statement:

Los demás programas de asistencia nutricional del FNS, las agencias estatales y locales, y sus beneficiarios secundarios, deben publicar el siguiente Aviso de No Discriminación:

De conformidad con la Ley Federal de Derechos Civiles y los reglamentos y políticas de derechos civiles del Departamento de Agricultura de los EE. UU. (USDA, por sus siglas en inglés), se prohíbe que el USDA, sus agencias, oficinas, empleados e instituciones que participan o administran programas del USDA discriminen sobre la base de raza, color, nacionalidad, sexo, discapacidad, edad, o en represalia o venganza por actividades previas de derechos civiles en algún programa o actividad realizados o financiados por el USDA.

Las personas con discapacidades que necesiten medios alternativos para la comunicación de la información del programa (por ejemplo, sistema Braille, letras grandes, cintas de audio, lenguaje de señas americano, etc.), deben ponerse en contacto con la agencia (estatal o local) en la que solicitaron los beneficios. Las personas sordas, con dificultades de audición o discapacidades del habla pueden comunicarse con el USDA por medio del Federal Relay Service [Servicio Federal de Retransmisión] al (800) 877-8339. Además, la información del programa se puede proporcionar en otros idiomas.

Para presentar una denuncia de discriminación, complete el *Formulario de Denuncia de Discriminación del Programa del USDA*, (AD-3027) que está disponible en línea en: http://www.ascr.usda.gov/complaint_filing_cust.html y en cualquier oficina del USDA, o bien escriba una carta dirigida al USDA e incluya en la carta toda la información solicitada en el formulario. Para solicitar una copia del formulario de denuncia, llame al (866) 632-9992. Haga llegar su formulario lleno o carta al USDA por:

- (1) correo: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; o
- (3) correo electrónico: program.intake@usda.gov.

Esta institución es un proveedor que ofrece igualdad de oportunidades.

In limited circumstances, CEs may use the abbreviated nondiscrimination statement on documents (print or electronic) that have limited space such as brochures or menus. The abbreviated nondiscrimination statement cannot be used on letters. Before using the

abbreviated statement, CEs must ensure that the document cannot be formatted or laid out to include the full nondiscrimination statement.

Abbreviated Nondiscrimination Statement:

This institution is an equal opportunity provider.

Nondiscrimination Poster

CEs must display the USDA nondiscrimination ...*And Justice for All* poster prominently at each feeding location. Posters are not required in the office of personnel who distribute and/or process applications.

USDA-approved posters are available from the CE's regional education service center (ESC).

Program Participant Racial and Ethnic Data

CEs must complete the *Food and Nutrition Pre-Award Civil Rights Compliance Review* form with their initial SNP application and agreement and must maintain racial and ethnic data each year after. There are two methods for maintaining this data:

For CEs Submitting Data to the Public Education Information Management System (PEIMS)

In Texas, public and charter schools are required to maintain this data through the state's Public Education Information Management System (PEIMS) which is administered by the Texas Education Agency (TEA). CEs that use the PEIMS system are not required to retain racial and ethnic data in another format after the first year of participation in the SNP.

For CEs Not Submitting Data to the Public Education Information Management System (PEIMS)

Any CE that does not report PEIMS data to TEA must collect racial and ethnic data on potentially eligible participants, applicants, and participants each year. CEs may use *Food and Nutrition Pre-Award Civil Rights Compliance Review* form to retain racial and ethnic data or a form created by the CE as long as the form provides the same information. CEs are not required to submit this information to TDA annually after the initial application. Instead, the documentation must be retained onsite.

Equal Access to Meals for All Students

When a serving site offers a selection of more than one type of meal, more than one item, or different types of milk that are part of the reimbursable meal, the school must offer all students the same choices no matter the eligibility of the student—free, reduced-price, or paid. If all types of meals or selected items, including those receiving free or reduced-price meals or free milk, are not made available to all students, those meals or items must not be claimed as a reimbursable meal or milk. **This requirement also applies when a CE chooses to provide a lower cost alternate meal for students with unpaid meal charges.¹**

¹ See the *Administrator's Reference Manual (ARM), Section 19, Meal Pricing* for additional information on this topic.

Civil Rights Training

Civil rights training is an annual requirement for all school nutrition programs. This training requirement applies to any CE staff member who takes a role in processing the eligibility for household meal applications, who interacts with participants about program eligibility, or who provides services related to the operation or management of the program. This includes any staff member who collects payments, provides eligibility information, processes applications, handles appeals, or any other activity where there is a possibility of discrimination occurring.

The civil rights training requirement is not limited to SNP staff.

The CE is not required to provide Civil Rights training to volunteers, but it is recommended. Training is also not required for individuals who provide information about a student's participation for a categorical program to SNP staff when the person is not responsible for certifying the eligibility of students for the SNP. This would include, but is not limited to, the homeless liaison, foster liaison, migrant director, or early childhood director who provides a list of students identified as categorical program participants to the SNP. However, if any of these individuals also have a role in managing and/or operating the SNP, the individuals must have civil rights training.

Teachers, administrators, or other CE staff who help to monitor activities in the cafeteria (on assigned duty) are not required to take the civil rights training. This includes teachers who sit with students to monitor table activities during meals.

To assist CEs with meeting this requirement, civil rights training is available at www.SquareMeals.org. The required civil rights training may also be counted toward meeting the continuing education/training professional standards.²

CE's Complaint Procedure and Form

CE's must have a written complaint procedure³ that ensures the following occurs:

1. Parents or guardians of students, potential participants, and the public are informed on how to submit a complaint
2. Staff know how to process a complaint when one is received.

Information about complaint procedures should be provided in English or the appropriate language to those who have Limited English Proficiency (LEP).⁴ **Sharing information and providing notification about the CE's complaint procedure** may be **communicated** through news releases, letters to parents, and household meal application forms.

- Communications about the complaint form **and how to submit** a complaint must include the following information:

² See the *Administrator's Reference Manual, Section 27, Professional Standards* for additional information on this topic.

³ When a complaint is submitted directly to CE, the CE will use the CE's complaint form. TDA provides a prototype for a www.SquareMeals.org to assist the CE in developing a form.

⁴ Designation for those who have a limited ability to speak, read, write, or understand in English, including low literacy and those whose native language is not English.

- Statement about where complaints may be filed, including an explanation that the person may **also** file complaints directly to TDA or USDA⁵ **and** with information about how to file directly to TDA or USDA.
- Identity of any agency to which complaints are forwarded or shared (i.e., TDA, USDA, or another governing agency).
- Procedures for handling complaints must include the following:
 - Method to indicate how the complaint was made: verbally, in writing, or in person.
 - Method to indicate the name of the person receiving the complaint and if the person receiving the complaint transcribed the complaint.
 - Adequate documentation to demonstrate that the CE did not attempt to resolve the complaint without forwarding the complaint to TDA.
 - The CE may initiate resolution of the complaint while waiting for a response from TDA. **If the CE does begin to address the complaint, the CE** must maintain documentation of what was done to resolve the complaint.

All SNP complaints alleging discrimination based on race, color, national origin, sex, age, or disability in verbal **statements**, written **statements**, or **stated in person** must be accepted by SNP personnel and must be forwarded to TDA.⁶

CE Sample Complaint Form

A sample complaint form that CEs can use to assist them in developing a local form is provided at www.SquareMeals.org on the publications page.

TDA Complaint Form

TDA also provides the TDA complaint form at www.SquareMeals.org that anyone may use to submit a complaint directly to TDA. The TDA form and directions are located under the *I Need To...* tab on the top navigation bar of the SquareMeals website.

Confidential Information

The issues of confidentiality and privacy of personal data are complicated and sensitive. Before developing local disclosure policies, CEs should discuss the issue with their attorney. Local policy may include requirements for a Memorandum of Agreement when data is shared with agencies that do not include federal, state, or local agencies evaluating or reviewing Child Nutrition Program operations or the Comptroller General.

All CE staff must carefully protect confidential information for all program participants and

⁵ See the Contact Information for the Texas Department of Agriculture (TDA) Food and Nutrition page located after the Table of Contents in this section. See the *Nondiscrimination Statement* subsection under the *Civil Rights* topic for detailed contact information for filing a complaint directly to USDA.

⁶ See the Contact Information for the Texas Department of Agriculture (TDA) Food and Nutrition page located at the beginning of this section.

their families. CEs should have written processes or procedures for protecting private information provided by households.

Guidelines for Disclosure to Specific Agencies

CEs may use the *Disclosure Chart* to help determine what type of information can be released to a specific type of agency. If the CE plans to release more than the allowed types of information, the CE must obtain written consent prior to disclosure.

Disclosure Chart	
CE may disclose eligibility status information without parental consent.	
All Eligibility Information	Eligibility Status Only
<ul style="list-style-type: none"> • Other USDA Child Nutrition Programs (CNPs)⁷ • Comptroller General of the United States for purposes of audit and examination • Federal Communications Commission (FCC) auditors conducting E-audit • Federal, state, or local law enforcement officials investigating alleged violations of any of the CNPs or investigating violations of any of the programs that are authorized to have access to names and eligibility status 	<ul style="list-style-type: none"> • State health program other than Medicaid/SCHIP, administered by a state agency or local education agency • Federal education programs • Federal, state, or local means-tested nutrition programs⁸ with comparable eligibility standard • State education programs administered by the state agency or local education agencies
CE may disclose eligibility information with prior parent notice with the parent given the opportunity to decline the release of information.	
All Eligibility Information	
<ul style="list-style-type: none"> • Medicaid or the State Children’s Health Insurance Program (SCHIP), administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible students 	
CE may disclose eligibility information with parent consent.	
Only Eligibility Status Information	
<ul style="list-style-type: none"> • Federal health programs other than Medicaid/SCHIP • Local education programs • Local health program 	

⁷ USDA Nutrition Programs include the following: Child Nutrition Programs—National School Lunch Program (NSLP), School Breakfast Program (SBP); Child and Adult Care Food Program (CACFP); Summer Food Service Program (SFSP), and Fresh Fruit and Vegetable Program; Special Supplemental Nutrition Program for Women, Infants, and Children, commonly known as WIC; WIC Farmers Market Nutrition Program (FMNP); and Senior Farmers Market Nutrition Program (SFMNP)

⁸ Federal means-tested nutrition programs with comparable eligibility standards include the following: Supplemental Nutrition Assistance Program (SNAP), which includes the Temporary Assistance for Needy Families (TANF) and Pandemic SNAP (P-SNAP), and the Food Distribution Programs (FDP) which includes USDA Foods in School, The Emergency Food Assistance Programs (TEFAP), Food Distribution Program on Indian Reservations (FDPIR), Commodity Supplemental Food Program (CSFP), and USDA Foods Disaster Assistance.

CEs should provide information to following agencies that commonly request disclosure according to the guidelines described:

Aggregate Data

The school nutrition department may disclose aggregate data to any program or individual when students cannot be identified through the release of the aggregate data or by means of deduction. An example of aggregate data is the number of students eligible for free or reduced-price meals in a school district when the school district is large enough to prevent identification through deduction. As aggregate data, this information does not identify individual students; therefore, parental notification and parental consent are not needed.

Family Educational Rights and Privacy Act (FERPA)

The U.S. Department of Education has established that educational records must be guided by the Family Educational Rights and Privacy (FERPA). SNPs are not governed by FERPA. However, any information that the CE provides to educational officials is regulated by FERPA and USDA confidentiality regulations.

For Example: A school nutrition department provides eligibility status information to the local school district so that the district can take advantage of a special program for students from low-income households. The information the school district receives must follow FERPA guidelines even though the school nutrition department is not governed by FERPA requirements. However, the CE that receives the information from the SNP must also follow USDA regulations with the use and disclosure of this information.

Federal Communications Commission (FCC) E-Rate Audits

The FCC, through the Universal Service Administrative Company (USAC), administers the E-Rate program. The USAC provides discounts to schools to obtain affordable telecommunication and Internet access. The discount rates are based on the percentage of students who are approved for free and reduced-price school meals. The USAC has contracted with private firms to conduct audits of the discount rates given to schools. These auditors are bound by disclosure of confidentiality requirements; they cannot share or otherwise release individual information. The release of information regarding students eligible for free and reduced-price meals and household school meal applications to auditors is permitted.

USDA has worked with the FCC to ensure that its audit protocols comply with the requirements of the NSLA. CEs may share individual students' information with authorized FCC auditors as long as the following audit procedures are used for the following purposes:

- Compare aggregate enrollment data with aggregate free and reduced-price eligibility data.
- For a small sample of eligible students, request their household school meal applications, which may include direct certification records.
- Confirm that a household school meal application or other

documentation exists for each selected student.

- Prohibit auditors from retaining personal student identification.

FCC auditors cannot verify the accuracy of the CE's determinations, conduct verification of household school meal applications, and cannot contact the household or other sources (such as assistance agencies or employers) to confirm the information on the household school meal application. CEs may redact (remove or black-out) all information from the household school meal application that does not show that the student has an approved household school meal application or other documentation on file.

For Example: If the student is identified by her or his student number, the CE could redact the student's name, address, etc. as long as the student number and approved eligibility status were visible.

Auditors may perform the following tasks:

- Ensure the information on the household school meal application was accurately processed, that the income and the number of persons in the household were totaled correctly, and the appropriate IEGs were used.
- Confirm that the students listed on rosters as eligible for free or reduced-price meals have approved household school meal applications on file or have been determined to be categorically eligible.
- Confirm that the number of students used for statistical purposes is based on approved household school meal applications.

Any discrepancies in the above areas must be brought to the attention of the CE.

Federal Education Programs

CE officials may disclose a student's eligibility status to individuals who are directly connected with and who have a need to know in order to administer and enforce federal education program requirements. However, other information obtained from the free and reduced-price household school meal application or through direct certification cannot be disclosed. CEs must establish procedures that limit access to a student's eligibility status to as few individuals as possible—i.e., only those who need to know.

National Assessment of Educational Progress (NAEP)

CEs may disclose, without parent or guardian consent, students' names and eligibility status to persons who are directly connected to the administration or enforcement of NAEP because NAEP is a federal education program. The term *persons directly connected* for the purpose of disclosure to NAEP includes federal, state, and local program operators responsible for NAEP program administration or program compliance and their contractors.

This does not imply that these individuals have routine access to participants' eligibility status. There must be a *need to know* related to the administration or enforcement of a federal education program or for legitimate NAEP purposes. However, even though CEs may disclose information to NAEP programs without parent or guardian consent, CEs are encouraged to inform households when they plan to disclose or use eligibility information outside the originating program and to have a written agreement with NAEP officials.⁹

NAEP State Assessment Programs

Additionally, CEs may disclose students' names and eligibility status to persons directly connected with the administration or enforcement of state educational assessment programs to the extent that the state assessment is part of the NAEP or the assessment program is established at the state, not the local, level.

Need to Know

CEs may disclose students' eligibility status only to persons determined to be *directly connected* with the administration or enforcement of a federal education program, state education program, state health program, or a means-tested nutrition program, as well as to persons directly connected with the Comptroller General Office or law enforcement for an authorized activity.

Although a program or person may be authorized under the NSLA to receive free and reduced-price eligibility information, there must be a legitimate *need to know* to provide a service or carry out an authorized activity.

For Example: Medicaid and CHIP agencies and health insurance program operators receiving students' free and reduced-price meal eligibility information must use that information only to enroll eligible students in Medicaid or CHIP.

State agencies, local education agencies (LEAs), and schools must ensure that data systems, records, and other means of accessing a student's eligibility status are limited to officials directly connected with administration or enforcement of a federal or state program activity. This includes federal, state, or local program operations responsible for the ongoing operation of the program or activity, or responsible for program compliance. Eligibility information cannot be made available to all school officials as a general practice.

For Example: A teacher who is directly responsible for the administration of a federal education program (e.g., providing tutorial or other assistance under NCLB for students with high economic need) is given limited access to information necessary to provide services. Other staff who are not providing such assistance under appropriate statutory or regulatory requirement cannot have access. Web-based data systems must have masking or de-identification capability to prevent unauthorized access to free or reduced-price eligibility status.

Other Child Nutrition Programs

The CE may disclose all eligibility information from a household's free and reduced-price meal application or information obtained through direct certification to persons directly connected with the administration or enforcement of the programs authorized under the

⁹ See the *Memorandum of Agreement Regarding Disclosure* subsection in this section for more information on a written agreement.

Child Nutrition Programs. This includes NSLP, SBP, School Milk Program (SMP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Women, Infants, and Children (WIC) Food and Nutrition Service.

This means that program eligibility information collected for any one of the CNPs may be shared with another CNP, even if the programs are sponsored by different entities. For example, a public school may disclose information from children's free and reduced-price school meal applications, without household consent, to an SFSP administered by a park and recreation agency.

Other Federal or State Means-Tested Programs

Without household consent, a CE may only disclose a child's name and eligibility status to a person directly connected to other Federal or State means-tested programs. Disclosure of other information, such as a parent or guardian's name and address, requires household notification and consent.

The CE may include a disclosure statement to inform the household about information to be disclosed in the letter sent to households at the beginning of the year, the household school meal application, or other notification documentation.

In all cases, the receiving entity that is given disclosed information must be informed in writing of the following:

- Eligibility information may only be used for the purpose for which the disclosure was made.
- Further use or disclosure to other parties is prohibited.
- A violation of federal law or USDA regulations restricting disclosure may result in a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both.

Other State Education Programs

Other state education programs also are eligible to have access to participants' names and eligibility status, without parent or guardian consent, but the program must be established at the state, not the local, level.

Memorandum of Agreement Regarding Disclosure

Prior to disclosing information on the eligibility of individual students, CE officials should enter into a memorandum of agreement (or memorandum of understanding).

Education Agencies

For disclosure for education purposes, the CE and the receiving agency must have an agreement that includes the following:

1. Specify the names of the individuals who would have access to the information
2. Provide an explanation of how the information would be used in implementing the No Child Left Behind (NCLB), Elementary and Secondary Education Act (ESEA)

3. Provide an explanation of how the information will be protected from unauthorized uses and third-party disclosures
4. Provide a statement of the penalties for misuse of the information¹⁰

Medicaid/SCHIP Agencies

For any disclosures to Medicaid or CHIP, the CE and receiving agency must have an agreement that includes the following information:

1. Health insurance program or health agency receiving student's eligibility information
2. Description of the information that will be disclosed, specifying that the information must only be used to seek to enroll students in Medicaid or CHIP
3. The way the information will be used and how it will be protected from unauthorized uses and disclosures
4. Penalties for unauthorized disclosure
5. Signature of a CE official (also called *determining agency*) and the Medicaid/CHIP program or agency receiving the students' eligibility information

Other Entities

For any disclosures to other entities, including NAEP, the CE and receiving agency must have an agreement that includes the following:

- Signatures of authorized representatives for the CE and receiving entity
- Identification of the entity receiving the information
- Description of the information to be disclosed and how it will be used
- Description of how the information will be protected from unauthorized use and disclosure
- Description the penalties for unauthorized disclosure

Notice of Disclosure

The notice of either potential or specific disclosure must be given to parents or guardians prior to disclosure and with a reasonable time limit for parents or guardians to elect not to have their students' information disclosed. CEs may incorporate potential disclosures or specific disclosure descriptions into documents that regularly go out to households.

For Example: The notice of potential disclosure or specific disclosure may be provided as follows:

- In the letter to households that accompanies the free and reduced-price household school meal application
- In the letter informing parents/guardians of their students' eligibility for free meals through direct certification
- In the multi-student/multi-use household school meal application

¹⁰ In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

The notification of potential disclosure or specific disclosure to parents or guardians must include the following:

- An explanation that information will be used by other federal, state, or local agencies as authorized by the National School Lunch Act (A list of specific programs is not necessary.)
- A list of the information that may be disclosed, including students' names, eligibility status, or other information obtained through the household school meal application or direct certification
- A statement about their right to refuse consent to the disclosure
- An explanation that the information will be used to facilitate the enrollment of eligible students in a health insurance program or other programs
- A statement that their decision will not affect their students' eligibility for free and reduced-price meals

Consent Statement Requirements

If the disclosure of data requires parental or guardian consent, the consent statement must be in writing. It may be obtained at the time the household submits a household meal application or at a later time. Parental consent to release information must be obtained each school year; consent forms cannot be extended from one school year to the next.

The consent statement must describe the following actions:

- Identify the information that will be shared and how the information will be used
- Be dated and signed by the parent or guardian of the applicant household, even though the household school meal application for free and reduced-price meals may be signed by any adult household member
- State that failing to sign the consent statement will not affect eligibility for or participation in the program and that the information will not be shared by the receiving program with any other entity or program
- Enable the parent/guardian/adult to limit consent to only those programs with which he or she wishes to share information

For Example: The consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for program benefits from a specific program.

Parent Not Living in the Student's Household and Noncustodial Parents

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split or joint custody.

For Example: A father shares joint custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children are not eligible for reduced price meals. The father asks to see the application submitted by the mother, so he can see if the form contains accurate information.

CEs are not permitted to release eligibility information contained on a household application to a parent who does not live in the student’s household without written permission from the person who signed the application. If there is any question about releasing eligibility information for custody or divorce actions, local officials should consult their legal counsel before releasing eligibility information. The sole exception would be a request made under a court order or subpoena. An attorney’s request would not be a sufficient justification for the release of the application data. CEs should consult with their local counsel to determine if the disclosure is required.

TDA Forms

TDA provides the following forms on the SquareMeals website¹¹ to assist CEs in implementing the guidance presented in this section:

- *Pre-Award Civil Rights Compliance Review Form*
- *Texas Department of Agriculture Food & Nutrition Complaint Form*

Records Retention

TDA will check documentation related to civil rights training during an administrative review and may request documentation of training at any time.¹² CEs have the option to maintain records on paper or electronically.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request documentation related to confidentiality during both offsite and onsite administrative review processes as well as reviews specific to procurement.

Information Box 1
Records Retention
Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.
Nonprofit private schools, other organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Retained records include, but are not limited to, the following types of documentation:

Eligibility

- CEs must retain documentation of circumstances when student eligibility status is shared.
- CEs must retain agreements stipulating how and when student eligibility status is shared.
- CEs must retain notifications and responses when CEs ask households for permission to share student eligibility status.

¹¹ Available at www.squaremeals.org.

¹² See the *Records Retention* subsection in this section for additional information on this topic.

Civil Rights

- Nondiscrimination Statement. **CEs must retain documentation that demonstrates their use of the nondiscrimination statement on communications with households and other documents as appropriate.**
[NOTE: When a document is printed or released using the most current nondiscrimination statement when the document was printed or released, the CE is not required to retroactively update the document with a nondiscrimination statement that is issued after the print or release date. If the document is reprinted or released again, the nondiscrimination statement must be updated to reflect the most current statement. However, the CE should maintain records that indicate when documents were printed or released in order to demonstrate that the correct nondiscrimination statement was used.]
- Training. **CEs must document that civil rights training was conducted. Documentation must include the following information: date, topic, and participants names, and indication of attendance.**

Complaints

CEs must retain documentation of all complaints submitted, documentation submitted to TDA, and documentation related to the resolution of any complaint.

Compliance

TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance. CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.