Section 4A, Protecting Confidential Information

Protecting Confidential Information Update Guide

January 28, 2020        Created a new confidentiality section in Administrator’s Reference Manual (ARM), Section 4A, Protecting Confidential Information.
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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.

<table>
<thead>
<tr>
<th>General Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical Address</strong></td>
</tr>
<tr>
<td>1700 N. Congress, 11th Floor, Austin, TX 78701</td>
</tr>
<tr>
<td><strong>Phone</strong></td>
</tr>
<tr>
<td>877-TEXMEAL, (877) 839-6325</td>
</tr>
</tbody>
</table>

**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**

- SNAPWaivers@TexasAgriculture.gov for questions about
  - Breakfast Waiver
  - Child Nutrition Program Requirement Waivers
  - Gender Exception
  - Hiring Standards for 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
- TX-UNPS Direct Certification Direct Verification System
  - DirectCertification@TexasAgriculture.gov
- Farm Fresh Initiative (Local Products)
  - FarmFresh@TexasAgriculture.gov

**Questions about Program Flexibility**

- SNPWaivers@TexasAgriculture.gov for questions about
  - Breakfast Waiver
  - Child Nutrition Program Requirement Waivers
  - Gender Exception
  - Hiring Standards for 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 Financial Issues**

- Capital Expenditures
  - NSLP-SBP.BOps@TexasAgriculture.gov
- Claims
  - BCT.BOps@TexasAgriculture.gov
- Procurement, Including Sole Source
  - CE.ProcurementReviews.BOps@TexasAgriculture.gov
- Excessive Balance Plan
  - School.Operations@TexasAgriculture.gov

**USDA Foods**

- Questions about USDA Foods Carryover Inventory
  - CommodityOperations@TexasAgriculture.gov
- USDA Foods Transfer
  - CommodityOperations@TexasAgriculture.gov

1/14/2020
Protecting Confidential Information

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 ensures that confidential information is protected.

Guidance in the following Administrator’s Reference Manual sections will also assist the CE in protecting confidential information:

- Section 2, Application and Agreement
- Section 4, Determining Eligibility
- Section 5, Special Provisions
- Section 6, Verification

Definitions for This Section
For this section, the following definitions provide information that may assist CEs:

<table>
<thead>
<tr>
<th>Confidential Information</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethics</td>
<td>Principles of conduct governing and guiding an individual or a group.</td>
</tr>
<tr>
<td>Procedures</td>
<td>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.</td>
</tr>
</tbody>
</table>

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 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 information can be released to a specific type of agency.

For Example: Using the chart to help determine what information can be released, the CE discloses information on eligibility status to a federal education program without parental consent. If the same program requests household size, CEs must obtain consent prior to disclosure.

### Disclosure Chart

<table>
<thead>
<tr>
<th>CE may disclose eligibility status information without parental consent.</th>
<th>Eligibility Status Only</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Eligibility Information</strong></td>
<td><strong>Eligibility Status Only</strong></td>
</tr>
<tr>
<td>• Other USDA Child Nutrition Programs (CNPs)</td>
<td>• State health program other than Medicaid/SCHIP, administered by a state agency or local education agency</td>
</tr>
<tr>
<td>• Comptroller General of the United States for purposes of audit and examination</td>
<td>• Federal education programs</td>
</tr>
<tr>
<td>• Federal Communications Commission (FCC) auditors conducting E-audit</td>
<td>• Federal, state, or local means-tested nutrition programs with comparable eligibility standard</td>
</tr>
<tr>
<td>• 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</td>
<td>• State education programs administered by the state agency or local education agencies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CE may disclose eligibility information with prior parent notice with the parent given the opportunity to decline the release of information.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Eligibility Information</strong></td>
</tr>
<tr>
<td>• 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</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CE may disclose eligibility information with parent consent.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Only Eligibility Status Information</strong></td>
</tr>
<tr>
<td>• Federal health programs other than Medicaid/SCHIP</td>
</tr>
<tr>
<td>• Local education programs</td>
</tr>
<tr>
<td>• Local health program</td>
</tr>
</tbody>
</table>
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\(^1\) 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.

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\(^1\) See Information Box 3, Carryover Eligibility for more information on master lists and rosters.
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.²

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 operators.

² See the Memorandum of Agreement Regarding Disclosure subsection in this section for more information on a written agreement.
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 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 information

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

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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.
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

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.
Record Retention

The CE is required to maintain records for all program operations, including procedures and processes confidentiality. Records related to confidentiality will include documentation related to all operational issues, including, but not limited to, eligibility, verification, and notifications. 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.

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.

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.