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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
*DIVISION OF ECONOMIC & HOUSING STABILITY*

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Commissioner

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Director

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June 18, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**INFORMATIONAL ITEM**

Pursuant to RSA 4:45, RSA 21-P:43, and Section 4 of Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, 2020-09, and 2020-10, Governor Sununu has authorized the Department of Health and Human Services, Division of Economic and Housing Stability, (DHHS) of 129 Pleasant Street, Concord, NH 03301 to enter into a Memorandum of Understanding (MOU) with the New Hampshire Department of Education (DOE), of 21 South Fruit Street, Concord, NH 03301, for data sharing to administer the Pandemic Electronic Benefits Transfer program, at no cost, effective **Retroactive** to March 16, 2020, until terminated by either party.

Funding information is not provided because this MOU is at no cost to either Department.

**EXPLANATION**

This item is **Retroactive** to allow DHHS to quickly respond to the COVID-19 pandemic. The Families First Coronavirus Response Act (FFCRA), P.L. 116-127, authorized a temporary assistance program (Pandemic-EBT) for households with children who were receiving free or reduced school breakfast and/or lunch and who are now negatively impacted by school closures during the COVID-19 public health emergency. Pandemic-EBT provides a benefit amount per child, per household to assist families with feeding their children breakfast and lunch while at home. The benefit per day is equivalent to the daily reimbursement for free breakfast and lunch as specified by USDA/FNS, which is \$5.70 per child per day. The dates covered by Pandemic-EBT are March 16, 2020, through June 15, 2020, which equates to a total of 66 days of meal coverage. This program is voluntary for families and approximately 41,000 children will benefit from Pandemic-EBT.

To participate in this program, DHHS has partnered with DOE to develop a State plan that will ensure children participating in the free and/or reduced school breakfast and lunch program will be identified. DOE will provide DHHS with a data file that will allow DHHS to facilitate the disbursement of benefits to these families. The MOU establishes the terms, conditions, and safeguards to allow DHHS and DOE to share the required data file.

Area served: Statewide

Source of Funds: N/A

Respectfully submitted,

Lori A. Shibinette  
Commissioner



State of NH: Department of Education and Department of Health and Human Services – Memorandum of Understanding

**HHS MEMORANDUM OF UNDERSTANDING--AMENDED**

**No. 2020-046**

**I. PURPOSE, LEGAL AUTHORITY, AND DEFINITIONS**

**1. Purpose**

This Memorandum of Understanding, hereinafter the "Agreement" or "MOU," made as of \_\_\_\_ day of May 2020 (the "Effective Date"), by and between the State of New Hampshire Department of Health and Human Services ("Health & Human Services" or "DHHS") and the Department of Department of Education ("DOE") contains the framework and the terms, conditions, safeguards, and procedures under which DOE agrees to share data with DHHS for the Pandemic Electronic Benefits Transfer for the purpose of helping to provide children and families with food security during a health emergency, as defined below.

New Hampshire has developed a State plan for the Pandemic Electronic Benefits Transfer (P-EBT) program which was submitted to the USDA/FNS.

The State plan was developed in collaboration with the NH Department of Education (DOE) and results in a coordinated effort with clearly defined roles and responsibilities to achieve the shared goal of food security for children and families.

Use of the data DHHS receives under this MOU is limited to providing assistance to SNAP and Non-SNAP households with children eligible for free or reduced price meals under the National School Lunch program and whose school is closed to providing in-building meals greater than 5 consecutive days due to a health emergency or the Covid-19 pandemic

**2. Legal Authority**

This Agreement supports the responsibilities of Health & Human Services and the DOE and is permissible pursuant to Families First Coronavirus Response Act (P.L. 116-127; FFCRA or the Act). This MOU shall be established so as to ensure compliance with all applicable state and federal confidentiality and privacy laws.

**3. Definitions**

The following terms may be reflected and have the described meaning in this document:

- A. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to



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situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.

- B. "Confidential Data" means all information owned, managed, created, received, from or on behalf of, the Department of Education (DOE) that is protected by information security, privacy or confidentiality rules and state and federal laws. This information includes but is not limited to derivative data, Personally Identifiable Information (PII), Family Educational Rights and Privacy Act (FERPA), Federal Tax Information, Social Security Administration, and CJIS (Criminal Justice Information Services) data.
- C. "Derivative Data" means data or information based on or created from Confidential Data.
- D. "End User" means any person or entity (e.g. contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives Confidential Data in accordance with the terms of this MOU.
- E. "Incident" means an act that potentially violates an explicit or implied security policy, which includes successful or unsuccessful attempts to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic mail.
- F. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State) will be considered an open network and not adequately secure for the transmission of unencrypted Confidential Data.
- G. "Virtual Private Network" (VPN) shall mean network technology that creates a secure private connection between the device and endpoint; hiding IP address and encrypting all data in motion.

### II. OBLIGATIONS OF DHHS

#### 1. Business Use and Disclosure of Confidential Data:

- A. DHHS must not use, disclose, maintain or transmit DOE Confidential Data except as reasonably necessary as outlined under this Agreement.
- B. DHHS must not, disclose any Confidential Data in response to a request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying the DOE so that the DOE has an opportunity to consent or object to the



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disclosure. In the event DHHS and DOE are not able to agree, the Department of Justice must decide whether or not to disclose the Confidential Information.

- C. DHHS must have a signed End User Agreement (EUA) (Attachment A) for all of its End-Users on file with DHHS, prior to DHHS sharing data with its End User(s).
2. DHHS will enable its NH Easy web portal to receive P-EBT applications in support of this MOU.
3. DHHS will provide a monthly report to DOE of the number of applicants received via NH Easy and the number of applicants approved or denied.
4. DHHS will audit applicant eligibility at random to detect fraud or misuse, including any applicable federal monitoring, including sub-recipient monitoring if applicable.

### III. OBLIGATIONS OF DOE

1. DOE shall provide DHHS with an initial file download, in Excel format, upon execution of this MOU. Thereafter frequency of information transfer shall be as needed to support this MOU by mutual agreement of the parties.
2. DOE agrees to work with DHHS, and its vendor if needed, to support this MOU and will inform SAU's of this MOU.

### IV. INFORMATION SECURITY

1. DHHS agrees to maintain proper security controls to protect the Confidential Data collected, processed, managed, and/or stored in association with this MOU at a level consistent with the requirements applicable to state and federal Parties.
2. DHHS agree to establish and maintain appropriate administrative, technical, physical, and organizational safeguards to protect the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements that is set forth in the principles of NIST 800-53 (Rev.4).
3. DHHS agrees to maintain policies and procedures to safeguard Confidential Data throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).
4. Parties agree Confidential Data may be transmitted via email if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
5. Portable Devices. If DHHS is employing portable storage devices, such as a thumb drive, to transmit Confidential Data said devices must be encrypted and approved by DHHS Information Security.



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6. Open Wireless Networks. DHHS may not transmit Confidential Data via an open network. DHHS may only employ a wireless network when remotely transmitting via a VPN.
7. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If DHHS is using the State's SFTP server to transmit Confidential Data, DHHS will structure the Folder and access privileges to prevent inappropriate disclosure of information.
8. If DHHS is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.
9. DHHS agrees it will not store or transfer Confidential Data collected under the terms of this MOU outside of the United States. This includes backup data and Disaster Recovery locations.

The parties agree to negotiate an amendment to this Agreement as needed to address changes in policy issues, fiscal issues, information security, and specific safeguards for maintaining confidentiality, as needed.

### V. SCOPE AND DATA DESCRIPTION

DHHS agrees the file of children who have received free or reduced-price school meals under the Richard B. Russell National School Lunch Act provided by DOE and information provided directly by P-EBT applicants via its NH Easy web portal will be restricted to the following use:

The file and direct applicant information will be used to determine children from both current SNAP households and Non-SNAP households who are eligible to receive P-EBT benefits.

#### 1. Source or Systems of Records

DOE shall provide Confidential Data from the following systems of records:

- Student level education data base (SLED); and
- The school submission for free and reduced meal eligibility (submission FNR).

#### 2. Data Elements Involved

- Student level file of eligible students in the Household (HH) (includes free or reduced, but not including free milk)
  - Names of eligible students in the HH (includes free or reduced, but not including free milk)
  - Student First Name
  - Student Middle Initial
  - Student Last Name



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- Student DOB
- Name of School
- Name of School Administrative Unit (SAU)
- All data provided will be effective as of the Beginning of the School Year

### 3. Transmission of Confidential Data

DHHS and DOE agree to only transmit data associated with this MOU via the State of NH Secure File Transfer Protocol (sFTP) server maintained and managed by the NH Department of Information Technology (DoIT). DHHS and DOE further agree that the NH sFTP folder named “/Home/foodnut.directcert/” will be the folder used to transmit data associated with this MOU.

### VI. LOSS REPORTING

The DHHS Information Security Office must notify NH-CIC and DOE of any information security events or Breaches immediately once the DHHS Information Security Office has determined that the aforementioned has occurred and that Confidential Data may have been exposed or compromised.

### VII. REIMBURSEMENT

No funds will be exchanged under this MOU for any work to be performed by the State Parties to carry out the requirements of this Agreement. The parties agree to absorb their respective costs associated with this Agreement.

### VIII. PERSONS TO CONTACT

DOE contact for Data Management or Information Security issues:

- Caitlin Davis ([Caitlin.davis@doe.nh.gov](mailto:Caitlin.davis@doe.nh.gov))

DHHS contact for Zoom assistance or Information Security issues:

- [DHHSInformationSecurityOffice@dhhs.nh.gov](mailto:DHHSInformationSecurityOffice@dhhs.nh.gov)

### IX. APPROVAL AND DURATION OF AGREEMENT

1. Effective Date: This Data Sharing Agreement will become effective when signed by authorized officials of both parties.
2. Duration: The duration of this Agreement is from effective date until terminated by either party. Parties to this Agreement may execute a new agreement prior to the close date of the Agreement.
3. Modification and Extension: The parties may modify or extend this Agreement at any time by a written modification, agreed upon by both parties.



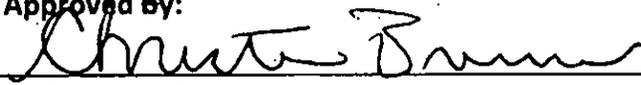
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- 4. **Termination:** Either party may unilaterally terminate this Agreement upon written notice to the other party, in which case the termination must be effective 30 days after the date of that notice or at a later date specified in the notice. In no instance shall such a termination be effective prior to the return or destruction of all Confidential Data that were provided to the Parties or derived from the Confidential Data obtained under the terms of this Agreement. Parties agree that they have the duty to protect and maintain the privacy and security of Confidential Data, and that duty must continue in full force and effect until such Confidential Data is returned and/or destroyed. For any Confidential Data or derivative data that destruction is not feasible for, the privacy and security requirements of this MOU must survive the termination or expiration of this MOU.
- 5. **Breach:** If the one of the parties determines that there may have been an Incident or Breach of the Confidential Data or individually identifiable derivative data or information by the one or more of the Parties, its End Users, contractors and/or agents that violates the terms of this MOU, the Party may, in its sole discretion, immediately and unilaterally terminate this Agreement upon notice to Partner Parties. Parties agree to cease using and return and/or destroy all Confidential Data and derivatives therefrom in its possession, End Users' contractors'/agents' possession, immediately upon notice of termination for an Incident or Breach.

**X: APPROVALS**

1. State of New Hampshire, Department of Education Approving Official

The authorized program official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, and confirms that no verbal agreements of any kind must be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.

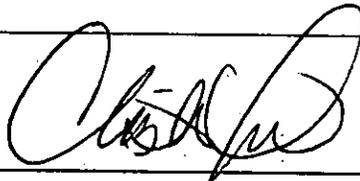
Approved by: 	
Christine M. Brennan Deputy Commissioner Department of Education	Date: 5/22/2020

2. State of New Hampshire, Department of Health & Human Services Approving Official

The authorized approving official, whose signature appears below, accepts and expressly agrees to the terms and conditions expressed herein, and confirms that no verbal agreements of any kind must be binding or recognized, and hereby commits their respective organization to the terms of this Agreement.



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Approved By: (Signature of DHHS Commissioner or Designee)	
	Date: 5/20/2020

Approved By:  
Attorney General's Office

*Catherine Pinos*

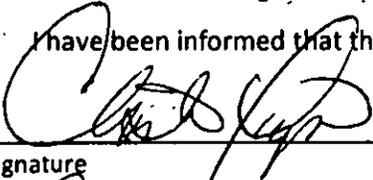
06/25/20

Catherine Pinos, Attorney

**ATTACHMENT A**  
**END USER AGREEMENT**  
**For DHHS MOU No. 2020-046**

By requesting and receiving approval to access DOE Confidential Data:

- I understand that I will have direct and indirect access to DOE confidential data in the course of performing my work activities.
- I agree to protect the confidential nature of all information to which I have access.
- I understand that there are state and federal laws and regulations that ensure the confidentiality of an individual's information.
- I understand that there are DHHS policies and procedures with which I am required to comply related to the protection of individually identifiable information.
- I understand that the information extracted from the site shall not be shared outside the DHHS Scope of Work or related signed Memorandum of Understanding and/or Information Exchange Agreement/Data Sharing Agreement agreed upon.
- I understand that my SFTP or any information security credentials (user name and password) should not be shared with anyone. This applies to credentials used to access the site directly or indirectly through a third party application.
- I will not disclose or make use of the identity, financial, health information or other confidential data of any person or establishment discovered inadvertently. I will report such inadvertent exposure and other security incidents or breaches immediately to [helpdesk@nh.gov](mailto:helpdesk@nh.gov) and [DHHSInformationSecurityOffice@dhhs.nh.gov](mailto:DHHSInformationSecurityOffice@dhhs.nh.gov).
- I will not imply or state, either in written or oral form, that interpretations based on the data are those of the original data sources or the State of NH unless the data user and DHHS are formally collaborating.
- I understand how I am expected to ensure the protection of individually identifiable information and other confidential data. Should questions arise in the future about how to protect information to which I have access, I will immediately notify my supervisor.
- I understand that I am legally and ethically obligated to maintain the confidentiality of DOE data and DHHS client, patient, and other sensitive information/confidential data that is protected by information security, privacy or confidentiality rules and state and federal laws even after the conclusion/termination of my or my organization's contract/written agreement with the Department or one of its authorized contractors working on behalf of the Department.
- I have been informed that this signed agreement will be retained on file for future reference.

  
Signature

Christie Tappan  
Printed Name

Associate Commissioner  
Business Name

Dept. of Health & Human Services

5/22/2020  
Date

Associate Commissioner  
Title