

MEMORANDUM OF UNDERSTANDING

Between the New Mexico Public Education Department (NMPED)
and _____

This **MEMORANDUM OF UNDERSTANDING** (MOU) is made by and between the New Mexico Public Education Department (NMPED) and the _____ (SCHOOL DISTRICT OR COMMUNITY ORGANIZATION).

WHEREAS, NMPED AND _____, are empowered to enter into MOUs;
and

WHEREAS, the H1N1 influenza virus may cause schools in New Mexico communities to close following a declaration of a public health emergency under section 319 of the Public Health Service Act, in order to minimize the children’s risk of exposure to illness;

WHEREAS, closure of schools would prevent the service of meals through the National School Lunch and School Breakfast Programs;

WHEREAS, the many of the students who normally receive meals through the National School Lunch and School Breakfast Programs may not have access to other sources of food when schools are closed;

WHEREAS, the Richard B. Russell National School Lunch Act authorizes the provision of meal service to children who are not in school during non-summer months due to an unanticipated school closure;

WHEREAS, the National School Lunch Act authorizes the waiver of the serving of meals in a congregate setting in order to provide meals to low-income children during H1N1-related school closures;

WHEREAS, for children enrolled in schools closed during H1N1-related emergencies , reimbursable meals may be offered by schools and other eligible community organizations under a modified Summer Food Service Program (SFSP) or Seamless Summer Option (SSO), as set forth in United States Department of Agriculture (USDA) Policy Memorandum SP 31-2009, SFSP 05-2009.

WHEREAS, the parties wish to formalize a cooperative agreement between NMPED and _____ regarding the provision of meals to children during H1N1-related school closures and the waiver of requirements under the SFSP and SSO programs of offering meals in congregate settings and limiting the offering of meals during an unexpected school closure to non-school sites;

NOW, THEREFORE, the parties mutually agree as follows:

A. Definitions:

“H1N1-related school closure” means a closure of schools as a direct result of a declaration of a public health emergency under section 319 of the Public Health Service Act.

“FNS” means the Food and Nutrition Service of the United States Department of Agriculture (USDA). FNS administers the nutrition assistance programs of the U.S. Department of Agriculture. The mission of FNS is to provide children and needy families better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

“SFSP” means the Summer Food Service Program of the FNS. SFSP provides free, nutritious meals and snacks to help children in low-income areas when children are out of school. NMPED administers the program in New Mexico. Local sponsors provide free meals to groups of children at a central site, such as a school or a community center.

“SSO” means the Seamless Summer Option. SSO is a program under FNS designed to encourage more school food authorities to provide meals during summer and other school vacation periods. SSO combines features of the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Summer Food Service Program (SFSP).

“Waiver request” means a formal written request from a school or community organization otherwise eligible to provide meals under the SFSP or SSO programs, to waive requirements of the SFSP programs or SSO programs. In particular, NMPED may waive the requirement that meals be served and consumed in a congregate setting or that during an unexpected school closure during the school year, meals must be served at a non-school site. A sample waiver request, which may be used by XXX is attached as Attachment 1.

B. Scope of Agreement

Responsibilities of _____

1. Upon approval of proper waivers by NMPED, XXX shall provide meal services to children who are not in school during non-summer months due to an H1N1 related school closure under the Summer Food Service Program (SFSP) or the National School Lunch Program’s Seamless Summer Option (SSO).
2. XXX shall submit a waiver request to NMPED requesting waiver of the requirement that meals served under the SFSP and SSO programs, during an H1N1 related school closure, be served and consumed in a congregate setting.
3. If applicable, XXX shall also submit a waiver request to NMPED requesting waiver of the requirement under SFSP or SSO programs that meals served during an unexpected school closure during the school year be served only at non-school sites.

4. XXX's waiver request to NMPED shall include:

- the name of school or community organization covered by the waiver request;
- at what point after the declaration of a public health emergency and school closure the meal service will start;
- what meal distribution method(s) the school or community organization will use and how the program will be operated to target the children in the closed schools ;
- how the meal distribution will target low-income children, including children that may not have free or reduced price eligibility information readily available (i.e. children new to the school) if the school does not have 50 percent or more free or reduced price children enrolled
- methods for communicating with families; and
- how the school or community organization will ensure proper operation of the program including meal content, meal counts, food safety, oversight, etc.

A sample waiver request, which may be used by XXX is attached as Attachment 1.

5. Once NMPED gives notice of approval of the waiver request, XXX shall notify NMPED before they activate the waiver. XXX shall activate the waiver only after a H1N1-related school closure in the community that XXX serves.

6. Once the waiver is activated, XXX may provide meals to children age 18 and under in a household where at least one child in the household is enrolled in the closed school. Meals may be provided to siblings, under age 18, in a household who may not be in school or who do not attend the closed school.

7. If the closed school has 50 percent or more of their enrolled students certified eligible for free or reduced price meals, XXX may develop meal distribution methods in which meals are available to all families with children enrolled in that school, with a focus on serving low-income children.

8. If the closed school has less than 50 percent free or reduced price enrollment, meal distribution methods must more directly target the households of enrolled children who are eligible for free or reduced price meals.

9. XXX shall provide meals through either pick-up or delivery methods or other methods which fulfill the need for social distancing during an H1N1 outbreak.

Responsibilities of NMPED

1. Upon submission of a proper waiver request, NMPED shall consider waiving the requirement that meals be served and consumed in a congregate setting, to support social distancing measures necessary during outbreaks of H1N1 virus.

2. Upon request and submission of proper a proper waiver request, NMPED shall also consider waiving the requirement that meals served during an unexpected school closure during the school year be only at non-school sites.
3. NMPED shall further consider requests to waive any other operational requirements applicable to the need to provide meals during an H1N1 related closure. Such requests will be considered on a case-by-case basis and will be forwarded by NMPED to the appropriate Food and Nutrition Service (FNS) Regional office for approval.
4. NMPED shall not approve waiver requests which would duplicate coverage in a given community or area of New Mexico.

C. Amendments

Any and all amendments, changes, and/or modifications to this MOU shall be made in writing, signed and dated by both parties before becoming effective. Neither NMPED nor XXX are obligated to perform tasks related to any changes and/or modifications not approved in writing by both parties.

D. Liability

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements to the performance of this MOU. Each party shall be liable for its own actions resulting from the performance of this MOU.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

E. Terms

This MOU shall be effective upon execution by the parties and shall remain in effect until either party desires to renegotiate the terms or cancel the agreement. A party may terminate the agreement upon thirty (30) days written notice except where the cancellation is for cause, i.e. a material and significant breach of any of the provisions of this agreement. In the circumstances of a breach, this MOU may be cancelled upon delivery of written notice to the other parties.

F. Participation in Similar Projects

This MOU in no way restricts NMPED or XXX from entering into MOUs with other public or private agencies, organizations and individuals or from participating in similar projects.

IN WITNESS WHEREOF, NMPED and _____ do hereby execute the Memorandum of Understanding as of the last signed date below

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

BY: _____ Date: _____

Dr. Veronica C. García,
Secretary of Education

(SCHOOL DISTRICT OR COMMUNITY ORGANIZATION)

BY: _____ Date: _____