



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

MEMORANDUM

To: School Food Authorities

From: *Lindsey Palmer*

Lindsey Palmer, RDN, LD

State Agency Director

Date: January 8, 2016

Re: Disclosure Requirements of the Child Nutrition Program

State Agency Memo

NSLP #03-16

The purpose of this memorandum is to provide a reminder for LEAs regarding the restrictions on disclosure of sensitive information collected through the Child Nutrition Programs. This memorandum also clarifies the applicability of disclosure protections for individual student eligibility information collected for purposes of the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP).

The US Department of Agriculture (USDA) recognizes that school staff and, more specifically, school-level food service personnel are frequently asked to provide free and reduced price eligibility information about individual children and may have concerns about disclosing the confidential information. While USDA encourages and supports appropriate disclosure of information, each request must be carefully reviewed. In order to disclose individual eligibility information, an official must first determine if the request is from one of the programs or sources authorized under the statute. If so, the official must ensure that the person(s) who would receive and use the information has a legitimate need for this information in order to carry out an authorized activity.

Generally, Local Education Agencies (LEAs) may disclose individual student information only to those persons, including organizations, specifically authorized by the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1751, et seq., and the disclosure of individual student eligibility information for purposes other than establishing eligibility for school meals generally is not permitted without parental consent.

The State agency must ensure that all appropriate Program staff have a thorough understanding of the laws and policies on disclosure of individual eligibility information. USDA recommends that there be a primary contact for such requests at the LEA-level, such as the food service

director, rather than staff at individual schools. This would allow for more consistent and appropriate application of the disclosure requirements.

As discussed in more detail below, please keep in mind that:

- statutory and regulatory requirements limit the release of student eligibility information without the written consent of the child's parent or guardian;
- the disclosure of aggregate information by an LEA is discretionary; and
- an agreement or memorandum of understanding (MOU) between State or local agencies regarding the disclosure of information may be required and, if not required, is recommended.

Also, aggregate information will often meet the needs of the requestor and can be disclosed by an LEA in lieu of individual student information whenever possible. However, Program operators are prohibited from disclosing aggregate information when children can be identified through the release. For example, individual identities of children in a specific classroom may be deduced with release of aggregate data since this is a very small subset in a school.

Statutory and Regulatory Requirements

Section 9(b)(6) of the NSLA (42 U.S.C. 1758(b)(6)) outlines the restrictions on the disclosure and use of information obtained from an application for free and reduced price meals, as well as the criminal penalties for improper release of information. Note that while the statutory provision references applications for school meals, the disclosure requirements also apply to information obtained through the direct certification process. The requirements may be found here: <http://www.fns.usda.gov/7cfr-part-245-free-and-reduced-price-eligibility>.

FNS recommends that State agencies, LEAs, and as applicable, CACFP institutions and SFSP sponsors, provide information on the pertinent statutory and regulatory provisions in response to requests for release of student eligibility information. The regulations implementing the NSLA disclosure provisions are as follows:

| Program | Definition of Disclosure | Provisions on Privacy Act Notice and Disclosure to Other Programs |
|---|--------------------------|---|
| Special Milk Program for Children | 7 CFR 215.2 | 7 CFR 215.13a(f)-(l) |
| Summer Food Service Program | 7 CFR 225.2 | 7 CFR 225.15(f)-(l) |
| Child and Adult Care Food Program | 7 CFR 226.2 | 7 CFR 226.23(e) and (i)-(n) |
| National School Lunch and School Breakfast Programs | 7 CFR 245.2 | 7 CFR 245.6(a) and (f)-(k) |

Chapter 5 of the Eligibility Manual for School Meals, July 2015 edition, provides specific guidance on applying the statutory and regulatory requirements surrounding disclosure of student eligibility information from the free and reduced price meals application. The manual may be found at <http://www.fns.usda.gov/cnd/guidance/default.htm>. A convenient source of information is the manual's "Disclosure Chart," which briefly outlines various types of requestors and any restrictions on receipt of student eligibility information. As reflected in the chart attached to this memorandum, examples of specific Federal programs authorized to receive eligibility status of individual children are No Child Left Behind and the National Assessment of Educational Progress. For those programs, however, only the name and eligibility status of a student may be disclosed without prior notice and consent.

Data Sharing with Medicaid and the State Children's Health Insurance Program (SCHIP)

Section 9(b)(6)(A)(iv) of the NSLA includes specific authority allowing LEAs to disclose individual eligibility information to Medicaid and the State Children's Health Insurance Program (SCHIP) (<http://www.fns.usda.gov/7cfr-part-245-free-and-reduced-price-eligibility>, 7 CFR 245.6(g)) without first obtaining parental consent. Prior to disclosing the information, LEAs must allow the parent or guardian to decline the Medicaid and SCHIP benefits. Parents may do so by signing and submitting an "opt out" form that explains that unless the parent or guardian signs and submits the "opt out" form, eligibility information will be shared with Medicaid or SCHIP. A sample of an "opt out form" is available at: <http://www.fns.usda.gov/sites/default/files/E-SchoolMealApp.pdf>. The NSLA specifies the "opt out" procedures are only for Medicaid/SCHIP purposes; therefore, LEAs may not use the same Medicaid/SCHIP opt-out form to release eligibility information for other programs or for other situations.

Need to Know

In addition to being authorized to receive information, those requesting eligibility information must have a "need to know" which refers 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. For instance, while Federal education programs are authorized, not all persons administering an education program in the school district need to access information (e.g., teachers, principals, or guidance counselors). State and local agencies must ensure that persons receiving a child's free and reduced price eligibility information have a legitimate need to know.

Parental Consent for Disclosure of Eligibility Information

Once appropriate agreements are in place with requesting entities, disclosure of all individual eligibility information to any entity may be made if the child's parent or guardian elects to share the information. The student's parent or guardian must provide prior and informed consent by signing a consent for disclosure form. The form must clearly state the purpose of the program or service requesting the data, what level of information will be disclosed, and to whom, as

appropriate. A prototype disclosure of information form is found at (<http://www.fns.usda.gov/sites/default/files/E-SchoolMealApp.pdf>).

The parent or guardian signed disclosure form permits an LEA to disclose the household's eligibility status or other meal application data, as appropriate to the requesting recipient of the information. LEAs may send out the disclosure form at the time the application is provided to households or as needed when services or programs become available. A common example of a program that would require written consent from a parent or guardian prior to disclosure of a child's eligibility information is a State or local waiver of fees (for books, athletic activities, uniforms, etc.).

Without prior and informed consent by the student's parent or guardians, disclosure of eligibility data is limited by the recipient of the information, what information may be disclosed, and the requirements for the disclosure. For example, Federal, State, or local means tested nutrition programs with eligibility standards comparable to the NSLP may receive all eligibility information without prior notice and consent from a parent or guardian. However, local education programs may not receive any eligibility information unless parental consent is obtained. (Please refer to the Eligibility Manual, Chapter 5, Confidentiality and Disclosure)

Disclosure of information forms must be completed annually; consent may not be extended from one school year to the next. If a child is directly certified, LEAs must provide parents or guardians with this information and the consent form. For example, if the LEA sends written notices of direct certification eligibility, the information and consent form could be included. State and local agencies administering the CACFP and SFSP should modify the consent form to meet their needs.

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has shared custody. For example, a father shares custody with the children's mother but believes that the mother has misrepresented household circumstances and that the children should not be eligible for free or reduced price meals. Disclosure of the requested information is not permitted under Federal law without written permission from the person who signed the application. If there is any question about disclosing this information for custody or divorce actions, local officials should contact the LEA attorney for assistance.

All questions should be sent to your designated Program Specialist.

| <i>Recipient of Information</i> | What May Be Disclosed | Requirements |
|---|---|--|
| <i>Programs under the National School Lunch Act or Child Nutrition Act</i> | All eligibility information | Prior notice and consent not required |
| <i>Federal/State or local means tested nutrition programs with eligibility standards comparable to the NSLP</i> | Eligibility status only | Prior notice and consent not required |
| <i>Federal education programs</i> | Eligibility status only | Prior notice and consent not required |
| <i>State education programs</i> administered by a State agency or local education agency | Eligibility status only | Prior notice and consent not required |
| <i>Local education programs</i> | NO eligibility information, unless parental consent is obtained | Must obtain parental consent |
| <i>Medicaid or the State children's health insurance programs (SCHIP), administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act to identify and enroll eligible children</i> | All eligibility information, unless parents elect not to have information disclosed | Must give prior notice to parents and opportunity for parents to decline to have their information disclosed |
| <i>State health programs</i> other than Medicaid/SCHIP, administered by a State agency or local education agency | Eligibility status only | Prior consent not required |
| <i>Federal health programs</i> other than Medicaid/SCHIP | NO eligibility information, unless parental consent is obtained | Must obtain parental consent |
| <i>Local health program</i> | NO eligibility information, unless parental consent is obtained | Must obtain parental consent |
| <i>Comptroller General of the United States</i> for purposes of audit and examination | All eligibility information | Prior notice and consent not required |
| <i>Federal, State or local law enforcement officials</i> investigating alleged violations of any of the programs under the NSLA and CNA or investigating violations of any of the programs that are authorized to have access to names and eligibility status | All eligibility information | Prior notice and consent not required |