



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

CN # 06-11
SFSP CN# 11-10
USDA SP #31-2010

MEMORANDUM

TO: Sponsors of the National School Lunch Program, School Breakfast Program & Summer Food Service Program

FROM: Mary Szafranski, Deputy Associate Superintendent
Arizona Department of Education, Health and Nutrition Services

Lynn Ladd, Director
Arizona Department of Education, School Health & Nutrition Programs

DATE: September 13, 2010

SUBJECT: Disclosure of Requirements for the Child Nutrition Programs

Original Signed

This memorandum restates the statutory and regulatory requirements for disclosure of children's eligibility information (CN #07-09, O2-09, 17-07, 15-03, 30-02, and 12-01). This information applies to the National School Lunch Program (NSLP), Summer Food Service Program (SFSP) and the Special Milk Program (SMP).

Local Educational Agency (LEA) staff and school-level food service personnel are frequently asked to provide free and reduced price eligibility information about individual children and may have concerns about the release of this information.

Identifying "Need to Know"

Not all persons administering a federal education program in the school district need access to this information (e.g., teachers, principals or guidance counselors). LEAs must ensure that persons receiving a child's free/reduced price eligibility information have a legitimate need to know.

Please keep in mind that:

- release of information is limited without the written consent of the child's parent or guardian;

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- release of data by an LEA is always optional, not required;
- an agreement or memorandum of understanding (MOU) between State or local agencies may be required and, even if not required, is useful; and
- when possible, aggregate information should be used. However, sponsors are cautioned about release of aggregate data when individual children’s eligibility may be deduced. For example, individual identities of children in a specific classroom may be deduced since this is a very small subset in a school.

Sharing Information with Medicaid and KidsCare

LEAs sharing eligibility information with Medicaid and KidsCare must have a written agreement. All eligibility information may be shared unless the child’s parent or guardian elects not to share the information. To allow the parent/guardian to decline, the LEA must include an “opt out” form that explains sharing information with Medicaid/KidsCare. The parent/guardian must sign and submit the “opt out” form or eligibility information will be shared with Medicaid/KidsCare. LEAs who share information with Medicaid or KidsCare must provide households the opportunity to request their information not be shared by disbursing the “opt-out” form located at <http://www.ade.az.gov/health-safety/cnp/nslp/parentforms> under *Program Forms*. The “opt out” form is specific to the sharing of eligibility information with Medicaid/KidsCare; therefore, LEAs cannot use the same form used for prior consent for other programs.

Use of the Multi-use Application for Parental Consent for Information Sharing

When the name and eligibility status of a child is requested, the release of information can always be made with informed consent by the parent or guardian. A common example of programs that would require written consent from a parent/guardian are waivers of fees (for books, athletic activities, etc.) related to eligibility for free or reduced price school meals. The Multi-Use Household Application can be sent to households by LEAs at the time of application. For the Multi-Use Household Application please visit <http://www.ade.az.gov/health-safety/cnp/nslp/parentforms>: *Program Forms*. The Multi-Use Household Application allows parents or guardians to authorize release. The parents/guardians must be told the purpose of the program or service and what information will be shared. Further, forms must be completed annually as consent cannot be extended from one school year to the next. If a child is directly certified, LEAs must provide parents/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.

Sharing Eligibility Information with Federal, State, and/or Local Agencies

During careful review, an official must first determine if the request is from one of the programs or sources authorized under the statute that allows the sharing of individual eligibility information. If so, the official must ensure that the person(s) who would receive and use the information have a legitimate need to carry out an authorized activity and complete a “Disclosure of Free and Reduced Price Information Agreement” found at: www.ade.az.gov/health-safety/cnp/nslp/parentforms.

It is very important that appropriate LEA staff have a thorough understanding of the policies on the release of children’s eligibility information. The Arizona Department of Education (ADE)

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recommends that there be a primary contact at the LEA-level, such as the food service director, rather than staff at individual schools. This allows for more consistent and appropriate application of the disclosure requirements. LEA officials are strongly urged to contact the ADE if they have any questions or concerns about release of information before they provide the information.

Examples of specific programs that are authorized, by law, to receive eligibility status of individual children are the:

- No Child Left Behind Program
- National Assessment of Educational Progress (NAEP).

Only the name and eligibility status may be shared with these programs without prior notice and consent.

Guidance

Periodically, schools will be asked to release eligibility information to a non-custodial parent or to a parent who has split 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. These requests are not permitted under the statute or regulations without written permission from the person who signed the application. If there is any question about releasing this information for custody or divorce actions, school officials should contact the school district's attorneys for assistance.

For more information relating to confidentiality, please visit the ADE CNP Guidance Manual, Section 5.16, found at: www.ade.az.gov/health-safety/cnp/nslp/GuidanceManual. A convenient source of information is in the attached "Disclosure Chart" which briefly outlines various types of requestors and any restrictions on receipt of information.

Statutory and Regulatory Requirements

Section 9(b)(6) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(b)(6)) delineates 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 law discusses applications, the disclosure requirements also apply to information obtained through the direct certification process.

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| Recipient of Information | Information that May be Disclosed | Required Notification and Consent |
|---|---|--|
| <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 administered by a State agency or local education agency</i> | 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 (KidsCare), 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 other than Medicaid/KidsCare, administered by a State agency or local education agency</i> | Eligibility status only | Prior consent not required |
| <i>Federal health programs other than Medicaid/KidsCare</i> | 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 for purposes of audit and examination</i> | All eligibility information | Prior notice and consent not required |
| <i>Federal, State or local law enforcement officials 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</i> | All eligibility information | Prior notice and consent not required |

For questions regarding this memo, please contact your School Health and Nutrition Specialist at (602) 542-8700.

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