



**COMMONWEALTH of VIRGINIA
Department of Education**

DATE: June 8, 2018
TO: Division Superintendents
FROM: James F. Lane, Superintendent of Public Instruction
SUBJECT: Disclosure of Free and Reduced Eligibility Information

The purpose of this memo is to provide guidance for Local Education Agencies (LEAs) regarding the restrictions on the disclosure of sensitive information collected through the Child Nutrition Programs. This information includes a student's free or reduced eligibility status. The Virginia Department of Education recognizes that LEA staff and school level staff are frequently asked to provide free and reduced eligibility information about individual students and may have concerns about disclosing this confidential information. This memo provides specific guidance for division superintendents, school administrators, and school nutrition program directors.

Regulations and Information on Disclosure

Generally, LEAs may disclose individual student information only to those persons, including organizations, specifically authorized by the Richard B. Russell National School Lunch Act (NSLA) to have access to children's eligibility information. The disclosure of individual student eligibility information for purposes other than establishing eligibility for school meals generally is not permitted without parental consent. Below are the regulations and resources that detail disclosure information:

- National School Lunch Act 42 U.S.C. 1758 Section 9(b)(6);
- 7 CFR 245.6 (2) and (f)-(k);
- *2017 Eligibility Manual for School Meals-* Section 5: Confidentiality and Disclosure

The NSLA allows persons directly connected with the administration of certain programs to have access to children's eligibility information. The chart below details programs, information that can be disclosed, and the requirement for consent and notice to parents for release of information.

Recipient of Information	Information that May be Disclosed	Requirement for Consent and Release
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Recipient of Information	Information that May be Disclosed	Requirement for Consent and Release
Programs under the NSLA: National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program, Summer Food Service Program, Food Distribution Program on Indian Reservations, Special Milk Program, Commodity Supplemental Food Program, The Emergency Food Assistance Program, Supplemental Nutrition Assistance Program, and the Special Supplemental Program for Women, Infants, and Children.	All eligibility information	Prior notice and consent not required
Federal, state or local means tested nutrition programs with eligibility standards comparable to the NSLP	Name and eligibility status only	Prior notice and consent not required
Federal education programs	Name and eligibility status only	Prior notice and consent not required
State education program administered by a state agency or LEA	Name and eligibility status only	Prior notice and consent not required
Local education programs	No eligibility information unless parental or guardian consent is obtained	Parental or guardian consent
Medicaid or Children's Health Insurance Program (CHIP) or Family Access to Medical Insurance Security (FAMIS) administered by a state agency or local agency to identify and enroll children	All eligibility information unless the parent or guardian elect not to have the information disclosed	Must give parents and guardians prior notice and an opportunity to decline to have their information disclosed
State health programs other than Medicaid or CHIP (FAMIS), administered by a State agency or LEA	Name and eligibility status only	Prior consent not required
Federal health programs other than CHIP or Medicaid	No eligibility information unless parents or guardians elect not to have information disclosed	Parental or guardian consent

Recipient of Information	Information that May be Disclosed	Requirement for Consent and Release
Local health and education programs (dental programs, athletic/activity fees, instructional fees, free textbooks, etc.)	No eligibility information, unless parental or guardian consent is obtained	Parental or guardian consent
Comptroller General for the purposes of audit or administration	All eligibility information	Prior notice and consent not required
Federal, State, or local law enforcement officials investigating alleged violations of any programs under the NSLA or other violations of the programs that are authorized to have access to names and eligibility status	All eligibility information	Prior notice and consent not required

LEAs may provide the confidential information to those requestors which do not meet the statutory or regulatory requirements for receipt of the confidential information by requesting and receiving written parental consent. A *Sharing of Information with Other Programs* form ([found at https://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals](https://www.fns.usda.gov/school-meals/applying-free-and-reduced-price-school-meals) ➔), under the heading *Prototype Household Letters*) can be included in either the school packet or the application for meal benefits provided to households at the beginning of each school year. The form allows parents and guardians to consent to the LEA's disclosure of their child's eligibility status in order to receive non-Program benefits and services tied to the child's eligibility to receive free or reduced price meals.

Information for Division Superintendents

The division superintendent is ultimately responsible for maintaining confidentiality and preventing overt identification of children receiving free and reduced price meals. This can be accomplished by having policies and procedures in place that follow federal and state regulations on disclosure. Also, the division superintendent must make sure the student data system has a way of masking the free and reduced eligibility status of students to prevent unauthorized access.

Division superintendents must find balance in providing support to economically disadvantaged children without betraying the trust of these families by providing eligibility information without their consent. Requestors often seek this information to provide additional benefits or additional funding to schools with high populations of low-income students. Although their intentions are honorable, parents must give permission for this information to be shared with outside organizations.

Information for Principals and Administrators

Principals and administrators have an active role in protecting and maintaining student confidentiality because of their direct contact with parents, students, teachers and community stakeholders. It is important to remember the sensitivity of eligibility information for parents, students and also the school nutrition staff responsible for maintaining the information. Each principal should have a school level procedure to handle inquires for the confidential information. Teachers and other school personnel should be made aware of the rights of parents and students to have this information remain confidential. At the school level, eligibility information cannot be made available to all school officials as a general practice. There must be a legitimate "need to know" to provide a service or carry out an authorized activity. It is also important to note that principals do **not** need to know eligibility information just because they are generally responsible for student welfare.

Access must be limited to the person directly responsible for the program or activity that requires the free and reduced eligibility information. Teachers, guidance counselors, principals or other school officials who are not providing the direct service cannot have access to the information. For example, teachers administering a test or helping distribute bag lunches do **not** need to know eligibility status because they are not assessing the test scores or submitting the claim for reimbursement. However, teachers administering federal education programs are authorized to receive the information.

Information for School Nutrition Directors

Student eligibility information must be safeguarded to protect parent/guardian and student confidentiality. School nutrition directors should do the following to help ensure the eligibility information is protected:

- Be familiar with the disclosure information regulations found in the NSLA;
- Have an agreement and or a Memoranda of Understanding (MOU) for each disclosure request;
- Make sure the agreement/MOU identifies the person receiving the information, how the information will be used, how the information will be protected from unauthorized use and disclosure, and the penalties for unauthorized disclosure;
- Have a policy and procedure in place to ensure student data systems or records containing eligibility information are protected from anyone using the system.

School nutrition directors are also encouraged to provide eligibility information to sponsors of the Summer Food Service Program (SFSP) in their efforts to feed children during the summer months. Prior notice and consent is not required but a memoranda of understanding should be completed.

The Memoranda of Understanding

A written request to disclose eligibility information should be obtained each time anyone wants access to the information. Each disclosure request must be carefully reviewed to determine if there is a legitimate need for the information in order to carry out an authorized activity. In order to help streamline the request process and provide more consistent guidance, it is recommended that LEAs provide a primary contact at the LEA level. Often this person is the LEA's designated approving official or school nutrition director.

With each approved disclosure of eligibility information, it is recommended that LEAs have an agreement or Memoranda of Understanding (MOU) on file. The agreement or MOU should at least:

- Be signed by both the LEA and the receiving entity;
- Identify the entity receiving the information;
- Describe the information to be disclosed and how it will be used;
- Describe how the information will be protected from unauthorized use and disclosure; and
- Describe the penalties for unauthorized disclosure.

Assessment Testing

The National Assessment of Educational Progress (NAEP) and the Commonwealth's Standards of Learning (SOLs) are two assessment programs that can receive children's names and eligibility status without parental or guardian consent. Persons directly connected to the administration of the NAEP and the assessment of the SOLs are authorized recipients of the children's free and reduced price meal eligibility status. The NAEP is a federal education program and the SOLs are an assessment program established at the state level.

The term "persons directly connected" for the purpose of disclosure to assessment programs includes federal, state and local program operators responsible for their program administration or program compliance. This would also include their contractors. This does not imply that these persons have routine access to participants' eligibility status. There must be a "need to know" for legitimate assessment purposes.

Penalties for Improper Disclosure

Improper disclosure includes publishing, divulging, disclosing, or making known in any manner not authorized by federal law, any eligibility information. This includes sharing information between authorized programs when both parties are not the determining agency. For example, an LEA determining official shares free and reduced information with another agency for use with the Child and Adult Care Food Program (CACFP). The CACFP representative then shares the information with the agency that administers the Summer Food Service Program (SFSP). Although both programs are authorized under the NSLA, the agency administering the SFSP should directly contact the LEA for the information. The federal penalty for improper disclosure includes a fine up to \$1,000 or imprisonment of up to one year, or both.

Please direct questions regarding the information in this memorandum to Sandy Curwood, Ph.D. RDN, Director of School Nutrition Programs, at (804) 225-2082 or by email at sandra.curwood@doe.virginia.gov ✉, the School Nutrition Program regional specialist assigned to your division, or SNPPolicy@doe.virginia.gov ✉.

JFL/SCC/bdb

Attachments:

- A. [Prototype Agreement](#) (Word)
- B. [Sharing Information with Other Programs](#) (Word)

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