

**South Carolina
School Food Service Programs Reference Manual
Contributor: Walter Caudle**

**Chapter 5
Confidentiality & Disclosure of Eligibility Information**

Table of Contents

Limitations on Disclosure	5-2
Aggregate Information.....	5-2
Disclosures are Restricted by Law	5-2
“Need to Know”	5-2
Disclosure of Social Security Numbers.....	5-3
Penalties for Improper Disclosure	5-3
No Child Left Behind and Title I.....	5-3
E-Rate.....	5-3
Requirements and Limitations for Disclosure of CNP Eligibility Information.....	5-4
Agreements of Understanding.....	5-5
Parental Notification and Consent.....	5-6
Disclosures that Do Not Require Parental Consent.....	5-7
Disclosures that Do Require Parental Consent	5-7
Waiver of Confidentiality Requirements.....	5-7
Policy on Confidentiality of Eligibility Information for Child Nutrition Program Benefits	5-9
Form:	
Request for Information on Eligibility for Child Nutrition Program Benefits-5A	5-10

Chapter 5 – Confidentiality & Disclosure of Eligibility

Limitations on Disclosure

The issues of privacy and confidentiality of personal data are complicated, as well as sensitive. Before developing local disclosure policies, each School Food Authority (SFA) should discuss the issue with SCDE staff and/or its legal counsel.

Aggregate Information

The SFA may disclose aggregate information to any program or individual, such as the number of children eligible for free or reduced-price benefits. Information in the aggregate does not identify individual children. Therefore, parental notification and parental consent are not necessary.

Disclosures are Restricted by Law

SFAs may disclose children's free and reduced-price Child Nutrition Program (CNP) benefit eligibility information to programs, activities and individuals that are specifically authorized access under the National School Lunch Act (NSLA). Disclosing information to authorized entities is an option, not a requirement.

The NSLA specifies that persons directly connected to the administration or enforcement of certain programs or activities are permitted to have access to children's eligibility information. The chart provided in this chapter lists possible recipient programs, the information that may be disclosed, and whether the program may have access to children's eligibility information without parental consent or without the opportunity to decline the disclosure.

A disclosure to any other federal, state or local program or individual that is not authorized in the NSLA requires parental consent, court order or subpoena. Programs that require parental consent include local health and local education programs and other local level activities. For example, the disclosure of children's eligibility for free and reduced-price meals to determine their eligibility for free text books or reduced fees for summer school requires parental consent because these are local initiatives.

Written consent is also required to disclose information other than names and eligibility status to programs authorized to receive only participants' names and eligibility status. For example, an SFA may disclose names and eligibility status to a federal education program but if the program requests family size, the SFA must obtain a parental waiver of confidentiality prior to disclosing the information.

Contact the Office of Nutrition Programs, SCDE at 803-734-8188 to discuss questions or concerns about disclosing student eligibility information.

“Need to Know”

Although a program or person may be authorized under the NSLA to receive free and reduced-price eligibility information, there **must** be a legitimate need to know in order to provide a service or carry out an authorized activity.

For example, a Summer Food Service Program sponsor receiving children's free and reduced-price eligibility information can use that information **only** for the Summer Food Service Program. See the chart entitled, “Requirements and Limitations for Disclosure of CNP Eligibility Information” provided in this chapter for additional limitations on providing eligibility information to other programs.

Chapter 5 – Confidentiality & Disclosure of Eligibility

Disclosure of Social Security Numbers

The “Free and Reduced-Price School Meals Family Application” (provided in [Chapter 3– Policy Agreement](#)) generally requires the last four (4) digits of the Social Security number of the adult household member who signs the application. Most programs that request children’s free and reduced-price eligibility information will not need the adult’s Social Security number.

However, when disclosing or using the Social Security number provided by the household on the application for any purpose other than the CNP, the sponsor **must** modify the notice required by the Privacy Act of 1974 concerning the potential uses of the Social Security number. This notice is included in the “Parent/Guardian Letter” (provided in [Chapter 3 – Policy Agreement](#)). The notice **must** inform households of the additional intended uses of the Social Security number.

Penalties for Improper Disclosure

The NSLA establishes a fine of not more than \$1,000 or imprisonment of not more than one year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by federal law, any eligibility information.

Only the CNP SFA is allowed to disclose eligibility information. An entity authorized by the NSLA to receive CNP eligibility information is **not** allowed to share that information with any other entity. For example, the SFA may provide students’ eligibility status to a federal education program. The federal education program receiving the information is not authorized to share it with any other entity.

No Child Left Behind and Title I

In April 2009, the U. S. Departments of Agriculture and Education jointly issued updated policy guidance regarding the release of student eligibility information related to educational programs administered by the No Child Left Behind Act and Title I of the Elementary and Secondary Education Act.

CNPs may disclose the name and eligibility status of individual students for matters directly related to the administration of these federal education programs without parental consent. The release of this information does not extend to any information contained on eligibility applications and/or direct certification records. Any sharing of information must be on a “need to know” basis and follow other procedures outlined in this chapter.

E-Rate

For federal auditing purposes mandated by the Federal Communications Commission and performed by the Universal Service Administrative Service Company, CNPs may disclose the name and eligibility status of individual students for matters directly related to the administration of this federal education program without parental consent. For a small sample of eligible students, the release of this information may extend to actual applications and/or direct certification records. However, these auditors cannot retain any records, release any information to other parties, question the eligibility determination process, and/or contact the household for additional information.

Chapter 5 – Confidentiality & Disclosure of Eligibility

Requirements and Limitations for Disclosure of CNP Eligibility Information

Program or Individual Requesting Information	Information that May be Disclosed	Required Notification and Consent
<p>Child Nutrition Programs under the National School Lunch Act (NSLA) or Child Nutrition Act</p> <p>Comptroller General of the United States for purposes of audit and examination</p> <p>Federal, state, or local law enforcement officials investigating alleged violations of any of the programs under the NSLA or investigating violations of any of the programs that are authorized to have access to names and eligibility status</p>	All eligibility information	Prior notice and consent are not required
<p>No Child Left Behind and Title I E-Rate</p>	Name and eligibility status	Prior notice and consent are not required
<p>Medicaid or The Partners for Healthy Children (PHC - the state children's health insurance program) administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible children</p>	All eligibility information, unless the parent/guardian elects not to have information disclosed	Must give prior notice to parent/guardian and opportunity to decline to have the household's information disclosed
<p>Federal education programs</p> <p>State education or health programs (other than Medicaid/PHC) administered by the state or a local education agency</p> <p>Federal, state, or local means-tested nutrition programs with eligibility standards comparable to the Child Nutrition Programs</p>	Eligibility status only	<p>Prior notice required (see "Waiver of Confidentiality for Free and Reduced Price Meal Eligibility Disclosures" provided in Chapter 3 – Policy Agreement)</p> <p>Prior parental consent not required</p>
<p>Any other federal, state, or local program or individual not listed above</p>	NONE , unless parental consent, court order or subpoena is obtained	Must obtain parental consent, court order or subpoena

Chapter 5 – Confidentiality & Disclosure of Eligibility

Agreements of Understanding

An agreement is not needed for federal, state, or local agency personnel evaluating or reviewing CNP operations. These activities are part of routine CNP operations.

Students' names and eligibility status may be disclosed to persons directly connected with the administration or enforcement of federal education programs, state education and health programs and federal, state and local means tested nutrition programs. However, these persons should **not** have routine access to participants' eligibility status. There must be a legitimate reason why the information is needed for the approved program.

The SFA must enter into a written agreement with other entities requesting the information prior to disclosing children's eligibility information. In all cases, the receiving entity **must** be informed in writing that:

- Eligibility information may only be used for the purpose for which the disclosure was made.
- Further use or disclosure to other parties is prohibited.
- A violation of this provision may result in a fine of not more than \$1,000 or imprisonment of not more than one year, or both.

Refer to the sample written agreement, [Request for Information on Eligibility for Child Nutrition Program Benefits \(Form 5-A\)](#) and related [Policy on Confidentiality of Child Nutrition Program Benefits](#) (Page 5-8).

Requirements for Agreements On Disclosure of Eligibility Information

Q-1 *What must be included in the agreement between the SFA and the entity requesting the eligibility information?*

- A** **All agreements must:**
- Be signed by both the SFA and the receiving entity.
 - Identify the entity receiving the information.
 - Specify that the information must be used **ONLY** for the purpose for which it was requested.
 - Describe the information to be disclosed and how it will be used.
 - Describe how the information will be protected from unauthorized uses and disclosures.
 - Describe the penalties for unauthorized disclosure.

Disclosing Information to a Shared Custody or Non-Custodial Parent

Q-2 *Can a shared custody or non-custodial parent obtain information provided by the custodial parent on his/her application for CNP benefits?*

A No. The applicant’s consent, court order or subpoena is required before school officials can disclose that an application is on file or release the household’s eligibility information to anyone outside the household for non-program purposes.

Disclosing Information for a Civic Cause

Q-3 *May a school secretary who has access to the free and reduced-price eligibility information provide eligibility information or request confidentiality waivers from parents for a community wide “Adopt a Child” holiday gift exchange?*

A No. Only the reviewing official may request waivers of confidentiality for programs other than those listed in the chart provided in this chapter. The school secretary has access to the free and reduced price data only because of her “need to know” for use in meal accountability. The waiver should be requested at the time of the initial application for benefits (either on the “Free and Reduced-Price School Meals Family Application” or on the “Waiver of Confidentiality for Free and Reduced Price Meal Eligibility Disclosures,” provided in [Chapter 3 – Policy Agreement](#)) or the reviewing official should initiate the request for the waiver.

Parental Notification and Consent

Disclosures That Do Not Require Parental Consent

SFAs must **inform** households if they plan to disclose or use eligibility information for authorized programs (see chart provided in this chapter), other than the CNP. The notice of potential disclosure is included in the “Letter to Households” (see [Chapter 3 – Policy Agreement](#)).

Although households must be notified, parental **consent** is not required prior to disclosing eligibility information due to a court order or subpoena or to any of the following programs:

- **Child Nutrition Programs** under the National School Lunch Act or Child Nutrition Act including the Summer Food Service Program, Special Milk Program, etc.
- **Comptroller General** of the United States for purposes of audit and examination.

Chapter 5 – Confidentiality & Disclosure of Eligibility

- **Federal, state, or local law enforcement officials** investigating alleged violations of any of the programs under the National School Lunch Act and Child Nutrition Act or investigating violations of any of the programs that are authorized to have access to names and eligibility status.
- **Federal education programs** such as the National Assessment of Educational Progress (NAEP), Twenty-First Century Community Grants, Upward Bound, E-Rate, No Child Left Behind and Title I, etc.
- **State education or health programs** (other than Medicaid or The Partners for Healthy Children) administered by the state or a local education agency.
- **Federal, state, or local means-tested nutrition programs** with eligibility standards comparable to the CNPs.

Disclosures That Do Require Parental Consent

Parental consent (i.e. a waiver of confidentiality) is required prior to disclosing CNP eligibility information to the following programs:

- **Medicaid or The Partners for Healthy Children** (the state children’s health insurance program) administered by a state or local agency authorized under Titles XIX or XXI of the Social Security Act to identify and enroll eligible children.
- **Any other federal, state, or local program or individual not listed in the previous section**, even if the same person is responsible for approving eligibility for CNP benefits and awarding other benefits. Examples of such programs include free textbooks, reduced school fees, local charitable programs, etc.

The request for waiver of confidentiality **must** inform the parents/guardians that:

- They are not required to consent to the disclosure.
- The information will be used **only** for the purpose for which it is requested.
- Their decision will not affect their children’s eligibility for free or reduced-price CNP benefits.

Parents/guardians must consent to waive their confidentiality **prior** to disclosure and they should be given a reasonable amount of time to respond to the request.

Waiver of Confidentiality Requirements

The request for parents to waive their confidentiality **must** be in writing. It may be obtained using the “Waiver of Confidentiality for Free and Reduced Price Meal Eligibility Disclosures” form provided in [Chapter 3 – Policy Agreement](#).

Enter the names of the entities requesting eligibility information as well as the name and title of the school official in the spaces provided before printing the letter. Do **not** mark the checkboxes before printing. The parent or guardian of the student must mark each checkbox to confirm that they waive confidentiality (i.e. give the SFA permission to share their eligibility information with the entities indicated).

Requirements for the Waiver of Confidentiality

Q-4 *What must be included in the Waiver of Confidentiality?*

A The Waiver of Confidentiality must:

- Identify the information that will be shared and how the information will be used.
- Be signed and dated by the **parent or guardian** of the applicant household.
- State that failing to sign the Waiver of Confidentiality will not affect eligibility or participation in the program and that the information will not be shared by the receiving program with any other entity or program.
- Enable the parent/guardian/adult to waive confidentiality for only those programs with which he or she wishes to share information.

Policy on Confidentiality of Eligibility Information for Child Nutrition Program Benefits

The National School Lunch Act protects the confidentiality rights of participants. Disclosure of eligibility information about participants beyond that authorized by Public Law 103-448 and Public Law 105-336 is a criminal act punishable by a fine of not more than \$1,000 or imprisonment of not more than one year, or both.

Section 108 of Public Law 105-336 authorizes limited disclosure of student free/reduced-price Child Nutrition Program benefit eligibility status to persons who are directly responsible for the administration or enforcement of the following programs:

1. Federal education programs such as Title I and National Assessment of Education Progress.
2. State health or state education programs such as Quality Performance Accreditation (QPA) and "At Risk" state funding. The programs must be established by a state agency and administered by a state or local agency.
3. Federal, state or local means-tested nutrition programs with eligibility standards comparable to the National School Lunch Program (i.e. assist households with income at or below 185 percent of the federal poverty level, such as the Food Assistance Program or state or local nutrition program).

Applications for Child Nutrition Benefits **are not** part of a student's educational records under the Family Education Rights and Privacy Act (FERPA), because FERPA does not govern the administration of the National School Lunch Program or its related initiatives. Therefore, free and reduced-price Child Nutrition Program benefit information cannot be released with other educational records.

The limitations apply to all Child Nutrition Programs and to all eligibility information regardless of the manner in which the information is maintained including, but not limited to, print tape, microfilm, microfiche and electronic communication.

Applications and other eligibility information on individual students may be released upon presentation of a subpoena or other court order.

Applications and rosters of eligible students should **never** be faxed. Faxing does not protect the confidentiality of the information. Electronic data exchange via e-mail or other means of transfer should not be done unless using a Secure File Transfer Protocol (SFTP) Server or similar encrypted process.

To request students' free and reduced-price meal eligibility status, complete the attached Request for Information on Eligibility for Child Nutrition Program Benefits form. No information will be provided without this completed form. The Authorized Representative for the Child Nutrition Program is the only person authorized to grant the release of this information.

Request for Information on Eligibility for Child Nutrition Programs

Date: _____

Person Requesting Information: Name: _____

Title: _____

School or Site: _____

This request for student names and Child Nutrition Program eligibility status (i.e. free/reduced-price status) is for the purpose of:

- Title I
- National Assessment of Education Progress
- Quality Performance Accreditation
- _____
- _____

If others must view this list, provide their names and purposes (e.g. John Doe, data processing).

I understand that Section 108 of Public Law 103-448 allows release of student name and eligibility status to me **only** for the purpose of **direct** administration or enforcement of the program(s) indicated above. I will not use this information for any other purpose, nor duplicate this list. I will keep this list in a secured location during its use and dispose of it in an appropriate manner when the information is no longer needed. I understand disclosure of eligibility information about participants beyond that authorized by Public Law 103-448 is a criminal act punishable by a fine of not more than \$1000 or imprisonment of not more than one year, or both.

Signed _____

CHILD NUTRITION PROGRAM OFFICE USE ONLY:

I authorize _____ to have a copy of the free/reduced-price eligibility list for the following school(s) or site(s) _____

Date Request Received: _____ Date List(s) Sent: _____

Signature of Authorized Representative: _____