



Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction

Hathaway Building, 2nd Floor, 2300 Capitol Avenue

Cheyenne, WY 82002-0050

Phone 307-777-7673 Fax 307-777-6234 Website www.k12.wy.us

MEMORANDUM NO. 2008 - 026

TO: Superintendents of Public Schools

FROM: Katie Mordhorst, Nutrition Programs Supervisor
Health and Safety Unit *kgm*

DATE: February 22, 2008

SUBJECT: Confidentiality of Free and Reduced Meal Information

IMPORTANT INFORMATION

It has recently come to our attention that there are some problematic areas regarding the availability and release of the confidential free and reduced meal information to persons not allowed to have access to that information. Therefore, this memorandum is being sent to assist districts in evaluating their current practices and information security procedures. This information will also be sent to district business managers and food service directors to assist them in ensuring that procedures are in place so that confidential student information is only released to those persons allowed to receive it.

The information identified on the attachment is part of Section 4 of the *Wyoming Department of Education Child Nutrition Program Handbook*, which was recently revised and will be distributed at the Winter Food Service Directors Meeting on February 28. This handbook identifies policies and procedures required by both the U.S. Department of Agriculture and the Wyoming Department of Education for meeting the regulatory requirements of the National School Lunch Program, the School Breakfast Program, and any other child nutrition programs utilized by the schools in which they are operating.

If you have any questions regarding this information, please feel free to contact me at 307.777.6262 or kmordh@educ.state.wy.us. In this day of high technology and data gathering, we would encourage you to evaluate internal security issues when collecting and disseminating this and any other confidential information, which may fall under FERPA.

Enclosure

CONFIDENTIALITY OF MEAL BENEFIT FORMS

The United States Department of Agriculture has consistently held that the information provided on the application for free and reduced price meals or free milk must be treated confidentially and may only be used for determining eligibility for Child Nutrition Program benefits. Specifically, school food authorities (SFAs) are to treat the following information as confidential:

1. Information provided by the household on the application for free and reduced price meals or free milk.
2. Information provided by a household, or by any other source, as part of the verification process of a household's eligibility.
3. Information from any POWER, Food Stamp, and/or Food Distribution Program on Indian Reservations (FDPIR) agency about the active status of any child under any of these programs, provided for the purpose of direct certification of free meal/milk eligibility.
4. Information or procedures that overtly identify any child who has been determined eligible for free or reduced price meals or free milk, such as by the "use of special tokens or tickets, announced or published lists of names, or by other means." This could include special procedures free and reduced price students must use in order to receive meal/milk tickets.

Only school personnel who have direct administrative responsibility in the program should have access to this information. These guidelines apply to eligibility information regardless of the manner in which the information is maintained. These forms of information storage include, but are not limited to, print, tape, computerized student data management systems, electronic communications, and microfilm/ microfiche.

The *Healthy Meals for Healthy Americans Act of 1994* authorized the limited disclosure of student free and reduced price school meal eligibility status to certain federal, state and local programs. Disclosure of eligibility information beyond that authorized by statute is permitted only with signed parental consent. Although the National School Lunch Act, as amended by Public Law 103-448, authorizes release of free and reduced price school meal eligibility status, the Wyoming Department of Education has no authority to require school officials to do so.

Issues of privacy and confidentiality of personal data are complicated as well as sensitive. USDA recommends that determining agencies discuss the disclosure provisions with their legal counsel prior to developing local disclosure policies. A determining agency is defined as a school food authority, school (including a

private or charter school), child care institution, or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk determinations.

Requirements and Recommendations for Written Notification Between Determining Agencies and Requesting Entities

Limited disclosure requires that the determining agency provide written notification to the recipient entity. At a minimum, the receiving entity must be informed in writing that eligibility information may only be used for the purpose for which the disclosure was made, that further use or disclosure to other parties is prohibited, and that a violation of this provision may result in a fine of not more than \$1,000 or imprisonment of not more than one (1) year, or both.

The USDA further recommends that prior to disclosing or using any information for purposes other than the program for which the information was obtained, that a determining agency enter into a written agreement with the entity requesting the information. The USDA suggests that the agreement be signed by both the determining agency and the receiving entity and include the following stipulations:

- 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 uses and disclosures, and
- Describe the penalties for unauthorized disclosure.

An agreement is not needed for federal, state or local agencies evaluating or reviewing Child Nutrition Program operations or for disclosures to the Comptroller General.

Penalties for the Unauthorized Release of Information

The Richard B. Russell National School Lunch Act establishes a fine of not more than \$1,000 or imprisonment of not more than one (1) year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by federal law, any eligibility information unless these guidelines are met. This includes the disclosure of eligibility information by one entity authorized under the National School Lunch Act to receive the information to any other entity, even if that entity would be authorized to receive the information directly from the determining agency.

I. Limited Disclosure of Benefit Eligibility Information without Consent

A. Determining agencies may disclose, without consent, **participants' names and eligibility status** (whether they are eligible for free or reduced price meals or free milk) to persons directly connected with the administration or enforcement of the following programs:

1. Federal education programs, such as the National Assessment of Educational Progress (NAEP) and Title 1. The U.S. Department of Education's Office of Educational Research and Improvement contracts with another entity to administer NAEP.

Determining agencies may disclose the names of individual children who are eligible for free and reduced price meals to officials collecting data for Title I allocation and evaluation purposes. Some officials have expressed difficulty in getting poverty data for some children, particularly those attending private schools. While Title I funds are usually not disbursed to private schools but may be in some circumstances, children from the area who attend private schools may be included in the total count of needy children living in the attendance area. Therefore, private schools that participate in Child Nutrition Programs may release the names and eligibility status of children to Title I officials.

2. State education or state health programs provided a state agency or a local education agency administers these programs. Representatives of state or local education agencies evaluating the results and compliance with student assessment programs would be covered only to the extent that the assessment program is established at the state level rather than the local level. This would equate to the PAWS.
3. Federal, state, or local means-tested nutrition programs with eligibility standards comparable to the National School Lunch Program. This includes the Food Stamp Program and any USDA Child Nutrition Program, but it could include any state or local nutrition program that provides food assistance to households with incomes at or below 185 percent of the federal poverty level.

B. Determining agencies may disclose, without consent, all eligibility information obtained through the free and reduced price meal or free milk eligibility process (including all information on the application, direct certification document, or through verification) to the following only:

1. Persons directly connected with the administration or enforcement of the programs authorized under the National School Lunch Act or Child Nutrition Action of 1966. This includes the National School Lunch Program, School Breakfast Program, Special Milk Program,

Child and Adult Care Food Program, Summer Food Service Program, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Program eligibility information collected for any one of the Child Nutrition Programs may be shared with another Child Nutrition Program, even if the programs are sponsored by different entities.

For example, a school may disclose all information from the children's free and reduced school meal applications to a Summer Food Service Program administered by a community agency. A second example is the release of this information to a local after school care program not directly associated with a school district.

If a school food authority plans to release the Social Security Number to other Child Nutrition Programs, they must modify the Privacy Act statement on the application to inform households of the additional intended use of the number. The release of all information is not required by WDE or USDA. The release of names and status is sufficient for the purpose of the other organization. We generally suggest that the requesting organization submit a list of participant names and that the SFA identify the status of the listed children.

2. The Comptroller General of the United States for purposes of audit and examination. We have also allowed the Wyoming Department of Audit access to those documents for the purpose of conducting state mandated audits of the school foundation payments received by school districts.
 3. Federal, state or local law enforcement officials investigating alleged violations of any of the programs under the National School Lunch Act or the Child Nutrition Act may receive this information. In addition, if an investigation is initiated for violations of any of the programs authorized to have access to names and eligibility status identified previously, law enforcement officials may also have access to the information.
- C. While not a requirement, the USDA recommends that determining agencies inform households if they plan to disclose or use eligibility information outside the originating program. The notice of potential disclosure may be included in the public notice, letter to households that accompanies the meal benefit applications, on the application, or, for participants directly certified, in the document informing households of program eligibility. The notification should state that the participants' names, eligibility status, and other information provided on the meal benefit form, direct certification document, or verification information may be disclosed to certain other federal, state, or local agencies as

authorized by the National School Lunch Act. A list of specific programs is not necessary.

II. Limited Disclosure of Eligibility Information Only with Written Consent

The disclosure of participants' names and any eligibility information that identifies them individually to programs or individuals not specifically authorized by the National School Lunch Act requires written consent by a parent or guardian. Some programs that may request names and eligibility information but need prior consent include:

1. Local health and education programs and other local level activities. For example, the disclosure of children's eligibility for free and reduced price meals for free textbooks or school supplies requires parental/guardian consent. Local testing and assessments are included in these types of activities.
2. Any federal, state, or local program or individual not included in the statute.

III. Limited Disclosure of Information beyond that allowed under the National School Lunch Act, only with written consent.

The disclosure of information other than names and eligibility status to the programs authorized only to receive participants' names and eligibility status also requires written consent. For example, determining agencies may disclose names and eligibility status to a federal education program, but if the program request family size, the determining agency must obtain written consent prior to disclosure.

Required Elements for Consent Statements

Consent statements must be in writing and may be obtained at the time of application, such as on a multi-use application, or at a later time. The consent statement must conform to the following requirements:

1. The consent statement must identify the information that will be shared and how the information will be used.
2. The consent statement must be signed and dated. It must be signed by the parent or guardian of the participating child, even though the meal application itself may be signed by any adult household member.
3. The consent statement must state that failing to sign the consent statement will not affect eligibility or participation for the meal program

and that the information will not be shared by the receiving program with any other entity or program.

4. The parent or guardian must be able to limit consent to only those programs with which he or she wishes to share information. For example, the consent statement could use a check-off system under which the applicant would check or initial a box to indicate that he or she wants to have information disclosed to determine eligibility for benefits from a particular program. A template form for these types of consent statements is included annually with the prototype free and reduced applications. They are offered in an electronic format and can be easily adapted as needed for the SFA's specific needs.
5. When disclosing or using the Social Security Number provided by the household on the application for any purpose other than the program for which the number was collected, the determining agency must modify the notice required by the Privacy Act of 1974. This statement appears on the application for free and reduced price meals or free milk. The notice must inform households of the intended uses of the number. WDE staff can offer guidance on modifying this statement.

If you wish to obtain samples of written agreements for disclosure of information, please contact WDE. We will be happy to send a format compatible with your needs.

IV. KidCare/SCHIP Information

WDE works closely with the Wyoming Department of Health and the KidCare Health Insurance Program to help ensure that information is available to low income families regarding the program. The Department of Health has the ability to receive all information from the free and reduced meal application, but only if they enter into an agreement with the determining agency to receive that information. At this point, WDH had chosen not to do that and encourages the use of the information letter, which is attached to the updated application each year. We would strongly encourage all participants to include that letter/form each year and help promote this vital program for low income children.

V. Use of Aggregate Information

In many cases, other programs only need to aggregate eligibility data. This is defined as "aggregated totals of numbers of families or children approved for receipt of free and/or reduced price school lunch." Such data may not identify families or children by name or by any other unique identifiers under any circumstances.