

Food Service Facts Table of Contents

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6. Confidentiality & Disclosure of Eligibility Information

Limitations on Disclosure

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Before developing local disclosure policies, each sponsor should discuss the issue with its legal counsel.

Aggregate Information

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

Disclosures are Restricted by Law

Sponsors may disclose children's reduced price and free 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 sponsor decides whether or not the information will be disclosed within the parameters shown in the chart on page 6-3.

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 on page 6-3 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. 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 reduced price and free 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, a sponsor may disclose names and eligibility status to a federal education program; but if the program requests family size, the sponsor must obtain a parental waiver of confidentiality prior to disclosing the information.

Contact Child Nutrition & Wellness, KSDE 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 reduced price and free 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 reduced price and free eligibility information can use that information **only** for the Summer Food Service Program. See the chart on page 6-3 for additional limitations on providing eligibility information to other programs.

Disclosure of Last Four Digits of Social Security Numbers

The Application for CNP Benefits (www.kn-eat.org, School Nutrition Programs, Administration, Program Renewal, Form 3-B and 3-C) requires the last four digits of the Social Security number of the adult household member who signs the application. Most programs that request children’s reduced price and free CNP benefit eligibility information will not need the adult’s Social Security number.

However, when disclosing or using the last four digits of the Social Security number provided by the household on the application for any purpose other than the Child Nutrition Program, the sponsor **must** modify the notice required by the Privacy Act of 1974 concerning the potential uses of the last four digits of the Social Security number. This notice is printed on the reverse side of the Application for CNP Benefits. The notice **must** inform households of the additional intended uses of the last four digits 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 sponsor 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 sponsor 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

The “No Child Left Behind” legislation, signed into law in 2002, does not impact the rules regarding the confidentiality of reduced price and free eligibility information.

Overview of 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 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 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</p>	<p>All eligibility information</p> <p>All eligibility information</p> <p>All eligibility information</p>	<p>Prior notice and consent are not required</p> <p>Prior notice and consent are not required</p> <p>Prior notice and consent are not required</p>
<p>Medicaid or HealthWave (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>	<p>All eligibility information, unless the parent/guardian elects not to have information disclosed</p>	<p>Must give prior notice to parent/guardian and opportunity to decline to have the household’s information disclosed</p>
<p>Federal education programs</p> <p>State education or health programs (other than Medicaid/HealthWave) 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>	<p>Eligibility status only</p>	<p>Prior notice required (included in KSDE’s Letter to Households, Form 3-A)</p> <p>Prior parental consent not required</p>
<p>Any other federal, state or local program or individual not listed above.</p>	<p>NONE, unless parental consent is obtained</p>	<p>Must obtain parental consent</p>

Agreements of Understanding

An agreement is not needed for federal, state or local agency personnel evaluating or reviewing Child Nutrition Program (CNP) operations. These activities are part of routine Child Nutrition Program 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 sponsor 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](#) and related [Policy on Confidentiality of Child Nutrition Program Benefits](#) (Form 6-A).

Requirements for Agreements on Disclosure of Eligibility Information

All agreements must:

- ◆ Be signed by both the sponsor and 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 *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 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 *May a school secretary who has access to the reduced price and free 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 determining official may request waivers of confidentiality for programs other than those listed on the prior page. The school secretary has access to the reduced price and free 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 on Form 3-E Waiver of Confidentiality or the determining official should initiate the request for the waiver.

Parental Notification & Consent

Disclosures That Do Not Require Parental Consent

Sponsors must inform households if they plan to disclose or use eligibility information for authorized programs (see chart on page 6-3) other than the Child Nutrition Program. The notice of potential disclosure is included in the Letter to Households (www.kn-eat.org, School Nutrition Programs, Administration, Program Renewal, Form 3-B or Form 3-C).

Parental consent is not required prior to disclosing eligibility information to the following programs:

- ◆ **Child Nutrition Programs** under the National School Lunch Act or Child Nutrition Act including the Summer Food Service Program, Child and Adult Care Food Program, etc.
- ◆ **Comptroller General** of the United States for purposes of audit and examination
- ◆ **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, etc.
- ◆ **State education or health programs** (other than Medicaid/HealthWave) administered by the state or a local education agency
- ◆ **Federal, state or local means-tested nutrition programs** with eligibility standards comparable to the Child Nutrition Programs

Disclosures That Require Parental Consent

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

- ◆ **Medicaid or HealthWave** (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 preceding section**, even if the same person is responsible for approving eligibility for Child Nutrition Program 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 reduced price or free 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 on the following form:

- ◆ Form 3-E, Waiver of Confidentiality (www.kn-eat.org, School Nutrition Programs, Administration, Program Renewal)

Enter the benefit(s) in the space(s) provided before printing 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 in order to qualify for the specified benefit.

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