



**THE NATIONAL SCHOOL LUNCH PROGRAM, FERPA, PPRA AND ORAL HEALTH SURVEYS
GUIDANCE AND RESOURCES FOR STATE AND TERRITORIAL DENTAL PROGRAMS
MAY 2011**

Is your State or Territory Planning on Conducting a School-Based Oral Health Survey?



If yes, then you need to be aware that certain federal policies may impact both your planning and data collection processes; namely the National School Lunch Program (NSLP) disclosure policies, the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). These are complex policies that can be daunting; therefore, ASTDD developed this short summary that gives you general guidance and resources on NSLP disclosure policies, FERPA and PPRA in terms of oral health surveys. We hope that you find this information useful.

What is the National School Lunch Program?

The National School Lunch Program (NSLP) is a federally assisted meal program operating in over 101,000 public and non-profit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established in 1946 under the National School Lunch Act. The U.S. Department of Agriculture (USDA), Food and Nutrition Service administers the program at the federal level. At the state level, the National School Lunch Program is usually administered by state education agencies, which operate the program through agreements with school food authorities.

For More Information:
USDA, Food and Nutrition Services, National School Lunch Program
<http://www.fns.usda.gov/cnd/lunch/>

School districts and independent schools that choose to take part in the lunch program get cash subsidies and donated commodities from the USDA for each meal they serve. In return, they must serve lunches that meet federal requirements, and they must offer free or reduced price lunches to eligible children.

Any child at a participating school may purchase a meal through the NSLP. Children from families with incomes at or below 130% of the federal poverty level are eligible for free meals. Those with incomes between 130% and 185% of the poverty level are eligible for reduced-price meals. Children from families with incomes over 185% of poverty pay a full price, though their meals are still subsidized to some extent. More detailed information on NSLP's income eligibility guidelines is available at: www.fns.usda.gov/cnd/Governance/notices/iegs/IEGs.htm.

Why is National School Lunch Program Information Important?

One of the documented risk factors for poor oral health is low socioeconomic status. If child level information on eligibility for the NSLP can be obtained, oral health programs can document and monitor the oral health disparities that exist in lower-income children. Obtaining NSLP eligibility information from parents, however, can be difficult, especially if passive consent is being used. Having schools provide child specific NSLP eligibility information would be another method for obtaining this very useful information.

Can Schools Disclose a Child’s Free or Reduced Price Meal Eligibility Information?

Section 9(b)(2)(C)(iii) of the National School Lunch Act (42 USC 1758(b)(2)(C)(iii)) authorizes the limited disclosure of children's free and reduced price meal or free milk eligibility information to specific programs or individuals, without prior parent/guardian consent. Specifically, **state health programs** other than Medicaid/CHIP may receive eligibility status information without prior consent from the parent/guardian. The following table is an excerpt from the “Disclosure Chart” contained in an August 23, 2010 Policy Memo on the disclosure requirements for the Child Nutrition Programs that outlines what information may be disclosed to state health programs (USDA Memo code: SP 31-2010; CACFP 17-2010; SFSP 15-2010).¹

Recipient of Information	Information that May be Disclosed	Required Notification and Consent
State health programs other than Medicaid/SCHIP, administered by a state agency or local education agency	Eligibility status only	Prior consent not required

It is important to understand that although an educational agency “may” disclose eligibility status to a state health program, they are not “required” to do so. Because of this, it is important for state oral health programs to work closely with their state’s department of education to assist in the process of obtaining eligibility status information. The aforementioned USDA policy memo on disclosure suggests that educational agencies and state health programs complete a data sharing agreement that details the procedures for data sharing, persons who will have access to the information and why they need the information. Refer to Appendix 1 for a data sharing agreement prototype developed by the USDA.

Guidance: Oral health programs planning an oral health survey in a school-based setting should determine if they will need to have educational agencies disclose free/reduced price meal eligibility status. If yes, oral health programs should work with their state’s department of education to develop a data sharing agreement.

What is the Family Educational Rights and Privacy Act (FERPA)?

The Family Educational Rights and Privacy Act (FERPA) of 1974 (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds from any program administered by the Secretary of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. FERPA gives parents/students the right to (1) inspect and review education records, (2) amend education records and (3) consent to the disclosure of information from education records, except as provided by law. Confidential items that may be located in a student’s education record include, but are not limited to, eligibility for services under Part B of the Individuals with Disabilities Education Act plus medical or health related records. Without prior written consent, schools cannot disclose any information in the student record to a public health agency unless a significant threat exists to the health or safety of a student or other individuals. For example, a school, without prior written consent, cannot identify which children have special health care needs.

For More Information:
 Family Education Rights and Privacy Act
www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html
 Protection of Pupil Rights Amendment
www2.ed.gov/policy/gen/guid/fpco/ppra/index.html

In addition to the confidential information within the student’s record, the school may also maintain “directory information” which is not considered harmful or an invasion of privacy if disclosed. Directory information

¹ USDA, Food and Nutrition Service, Policy # 31-2010. Available at: www.fns.usda.gov/cnd/governance/policy.htm, accessed 04-19-2011.

includes (1) name, address, telephone, email address, (2) date and place of birth, (3) participation in official activities and sports, (4) field of study, (5) weight and height of athletes, (6) enrollment status, (7) degrees & awards received, (8) dates of attendance, (9) most previous school attended, and (10) grade level.

The Protection of Pupil Rights Amendment (PPRA)

The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98) applies to programs that receive funding from the U.S. Department of Education. PPRA governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

- Political affiliations or beliefs of the student or the student’s parent;
- Mental or psychological problems of the student or the student’s family;
- Sex behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of other individuals with whom respondents have close family relationships;
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- Religious practices, affiliations, or beliefs of the student or student’s parents; or
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

In addition, PPRA requires that schools offer parents an opportunity to opt their children out of participating in:

- The administration of any survey containing one or more of the 8 areas of information listed previously.
- Certain non-emergency, **invasive** physical examination or screenings.

Guidance: Oral health programs planning an oral health survey in a school-based setting should be familiar with both FERPA and PPRA. A state health agency conducting a non-emergency activity **may not** access the student’s educational record but may obtain directory information such as grade and age. To comply with PPRA it is recommended that oral health programs avoid income questions and assure that the oral health survey is not invasive.

Questions?

If you have any questions or need additional information on conducting a school-based oral health survey please contact:

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**USDA PROTOTYPE
DISCLOSURE OF FREE AND REDUCED PRICE INFORMATION
AGREEMENT**

I. PURPOSE AND SCOPE

(Insert name of determining agency) and (insert name of receiving agency) acknowledge and agree that children's free and reduced price meal and free milk eligibility information obtained under provisions of the National School Lunch Act (42 USC 1751 et. seq.) or Child Nutrition Act of 1966 (42 USC 1771 et. seq.) and the regulations implementing those Acts is confidential information. This Agreement is intended to ensure that any information disclosed by the (insert name of determining agency) to the (insert name of receiving agency) about children eligible for free and reduced price meals or free milk will be used only for purposes specified in this Agreement and that the (insert name of determining agency) and (insert name of receiving agency) recognize that there are penalties for unauthorized disclosures of this eligibility information.

II. AUTHORITY

Section 9(b)(2)(C)(iii) of the National School Lunch Act (42 USC 1758(b)(2)(C)(iii)) authorizes the limited disclosure of children's free and reduced price meal or free milk eligibility information to specific programs or individuals, without prior parent/guardian consent. Except that, the parent/guardian must be provided the opportunity to decline to share eligibility information prior to the disclosure for identifying children eligible for benefits under or enrolling children in the State Medicaid Program and the State children's health insurance program. Additionally, the statute specifies that for any disclosures not authorized by the statute, the consent of children's parents/guardians must be obtained prior to the disclosure.

The *requesting* agency certifies that it is currently authorized to administer the following program(s) and that information requested will only be used by the program(s) indicated:

Check all Program that apply	Information authorized
<i>Medicaid</i> or the <i>State children's health insurance program (SCHIP)</i> , administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act. Specify Program:	All eligibility information, unless parents elect not to have information disclosed.
<i>State health program</i> other than Medicaid/SCHIP, administered by a State agency or local education agency. Specify Program:	Eligibility status only; consent not required.
<i>Federal health program</i> other than Medicaid/SCHIP Specify Program:	NO eligibility information, unless parental consent is obtained.
<i>Local health program</i> Specify Program:	NO eligibility information, unless parental consent is obtained
<i>Child Nutrition Program</i> under the National School Lunch Act or Child Nutrition Act	All eligibility information; consent not required.

	Specify Program:	
	<i>Federal/State or local means tested nutrition program with eligibility standards comparable to the National School Lunch Program</i> Specify Program:	Eligibility status only; consent not required.
	<i>Federal education program</i> Specify Program:	Eligibility status only; consent not required.
	<i>State education program</i> administered by a State agency or local education agency Specify Program:	Eligibility status only; consent not required.
	<i>Local education program</i> Specify Program:	NO eligibility information, unless parental consent is obtained

Note: Section 9(b)(2)(C)(iv) specifies that certain programs may receive children's eligibility status **only**, without parental consent. Parental consent must be obtained to disclose any additional eligibility information. Section 9(b)(2)(C)(iv) specifies that for State Medicaid or SCHIP, parents must be notified and given opportunity to elect not to have information disclosed. Social security numbers may only be disclosed if households are given notice of the disclosure and the uses to be made of their social security numbers as required by Sec. 7 of the Privacy Act.

III. RESPONSIBILITIES

(Insert Name of Determining Agency) will:

When required, secure parents/guardians consent prior to any disclosure not authorized by the National School Lunch Act or any regulations under that Act, unless prior consent is secured by the receiving agency and made available to the determining agency;

For State Medicaid and SCHIP notify parents/guardians of potential disclosures and provide opportunity for parents/guardians to elect not to have information disclosed;

Disclose eligibility information only to persons directly connected to the administration or enforcement of programs authorized access under the National School Lunch Act or regulations under the Act or to programs or services for which parents/guardians gave consent.

(Insert Name of Receiving Agency) will:

Ensure that only persons who are directly connected with the administration or enforcement of the *(insert name of the Program)* and whose job responsibilities require use of the eligibility information will have access to children's eligibility information:

(Specify by name(s) or title(s)) _____

Use children's free and reduced price eligibility information for the following specific purpose(s):

(Describe) _____

Inform all persons that have access to children's free and reduced price meal eligibility information that the information is confidential, that children's eligibility information must only be used for purposes specified above, and the penalties for unauthorized disclosures.

Protect the confidentiality of children's free and reduced price meal or free milk eligibility information as follows:

(Specifically describe how the information will be protected from unauthorized uses and further disclosures.)

Description of Procedures to Transfer Meal Eligibility Information

(May be completed by either the determining agency or receiving agency)

Describe the procedures for transferring students' meal eligibility information from the determining agency to the requesting agency/program so as to limit the number of individuals who have access to the information.

(Describe)

IV. EFFECTIVE DATES

This agreement shall be effective from _____ to _____

V. PENALTIES

Any person who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (Section 9(b)(2)(C) of the National School Lunch Act; 42 USC 1758(b)(2)(C)) or a regulation, any information about a child's eligibility for free and reduced price meals or free milk shall be fined not more than a \$1,000 or imprisonment of not more than 1 year or both.

VI. SIGNATURES

The parties acknowledge that children's free and reduced price meal and free milk eligibility information may be used only for the specific purposes stated above; that unauthorized use of free and reduced price meal and free milk information or further disclosure to other persons or programs is prohibited and a violation of Federal law which may result in civil and criminal penalties.

Requesting Agency/Program Administrator

Printed Name: _____

Title: _____ Phone: _____

Signature: _____

Date: _____

Determining Agency Administrator

Printed Name: _____

Title: _____ Phone: _____

Signature: _____

Date: _____

*Any attachments will become part of this agreement.