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## FOR YOUR INFORMATION

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News For School Clients

### **Confidentiality of Information Related to Student Eligibility for Free Meals**

The National School Lunch Program is a federally assisted meal program administered by the U.S. Department of Agriculture (USDA) in conjunction with state education agencies. School districts that participate in the National School Lunch Program receive cash subsidies and donated commodities from the USDA, and in exchange they must serve meals that meet certain nutritional requirements. Any student at a participating school may purchase a school lunch subsidized by the National School Lunch Program (NSLP).

Students from families whose incomes fall below certain thresholds are eligible for free or reduced-price meals. Generally, students from families with incomes at or below 130 percent of the federal poverty level are eligible for free meals, and students from families with incomes between 130 and 185 percent of the federal poverty level are eligible for reduced-price meals.

Schools that participate in the NSLP must provide each student's household with an application form for free meals on an annual basis. The application form requires that the parent or guardian provide information on the household size and gross income in order to determine their child(ren)'s eligibility for free meals.

Recently, the USDA issued guidance clarifying the confidentiality requirements relating to the information obtained from an application for free meals. In the past, some well-intentioned schools sought to use eligibility information from the application to determine students' eligibility for other benefits, such as fee waivers for textbooks or field trips. The new guidance clarifies that, with few exceptions, eligibility information for free meals *may not* be used for purposes other than determining a student's eligibility for such meals. The USDA guidance clarifies that information relating to the NSLP is subject to the USDA's confidentiality rules, which provides for a heightened restriction to sharing student information among school employees than that generally provided by the Family Educational Rights and Privacy Act.

Schools that wish to use a family's household income information from the free meals application to determine a student's eligibility for other programs must first obtain the parent's consent for such use. A consent form must: (1) identify the information that will be used and how the information will be used; (2) inform the parent that failing to sign the consent form will not affect student eligibility or participation in any program; (3) inform the

parent that any program receiving the eligibility information will not share the information with any other program; and (4) be signed and dated by the parent. Additionally, the school must identify each specific program for which the eligibility information could be used, and allow parents the opportunity to select which, if any, of the listed programs may receive the free meal eligibility information. Some examples of the type of programs that may wish to use information from the application include fee waivers or reduced fees for textbooks, athletic participation, summer school, and community recreation programs. Schools that wish to share information regarding a student's eligibility for free meals with administrators of programs such as these should send a consent for disclosure form to all households along with the free meals application.

In the absence of parental consent for disclosure, free meal eligibility information may be used for certain limited purposes. A student's eligibility status may be disclosed to state and federal education program administrators, and other federal, state, or local nutrition programs with eligibility standards comparable to those of the NSLP. For example, student eligibility status may be disclosed without parental consent to a state education agency, such as the Wisconsin Department of Public Instruction (DPI), for purposes of comparing academic performance by students eligible for free meals with academic performance by other students. Similarly, if a local parks department offers a summer recreation

program that provides free lunches for participants, based on similar eligibility standards as the NSLP, student eligibility information may be shared with the administrators of the recreation program. Schools also may disclose aggregate information, such as the number of students in the school who are eligible for free meals, as long as individual students' eligibility cannot be deduced from the information.

Finally, schools are permitted to disclose students' free meal eligibility information to Medicaid and state children's health insurance programs, such as BadgerCare, for the purpose of allowing such programs to identify and enroll eligible children. The school must give notice to the parents and allow parents at least ten days to decline to have the eligibility information disclosed. Schools that wish to disclose eligibility information to Medicaid or BadgerCare should send an "opt-out" form to all households.

School administrators should consider the manner in which free meals eligibility is maintained, whether in a computer database or otherwise, and ensure that access to the information is restricted appropriately. The DPI has prepared forms, including a Free and Reduced Price School Meals Family Application and a parental consent to disclosure form, that school districts may wish to use to communicate the information to parents/guardians in order to ensure compliance with the USDA guidance. The forms are available on DPI's website at <http://dpi.wi.gov/fns/fincou1.html>.

*If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.*

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