

December 17, 2002

Dear Colleague:

As schools across the country begin to implement the *No Child Left Behind Act* (NCLB), the milestone elementary and secondary education legislation signed into law by President Bush at the beginning of 2002, a number of school officials have raised questions about the use of student information collected pursuant to the National School Lunch Program in carrying out provisions of Title I of the Elementary and Secondary Education Act, as reauthorized by NCLB. The purpose of this letter is to respond to those concerns.

Educators have specifically asked whether it is permissible to use information from the school lunch program in disaggregating student assessment scores, in determining student eligibility for supplemental educational services, and under certain circumstances, in prioritizing opportunities for public school choice.

Title I, Part A of the Elementary and Secondary Education Act (as reauthorized by the *No Child Left Behind Act*)

States and local educational agencies (LEAs) receiving funding under Title I, Part A must assess and report on the extent to which students in schools operating Title I programs are making progress toward meeting State academic proficiency standards in reading or language arts and in mathematics. Title I now requires States and LEAs to measure and report publicly on the progress of all students, and of students in various population groups, including students who are economically disadvantaged. If assessment results show that any of the groups has not made adequate yearly progress toward meeting State achievement standards for two consecutive years, the LEA must identify that school as needing improvement. All students attending the school must be given the opportunity to attend other public schools that have not been identified as needing improvement, with priority given to the lowest-achieving students from low-income families. In addition, once a school has failed to make adequate yearly progress for three years, the LEA must provide economically disadvantaged students who attend that school the opportunity to obtain supplemental educational services from a nonprofit, for-profit, or public provider.

For many LEAs, information from the National School Lunch Program is likely to be the best, and perhaps the only source of data available to hold schools accountable for the achievement of “economically disadvantaged” students, and also to identify students as eligible to receive supplemental educational services or to receive priority for public school choice. Moreover, in the case of the priority for public school choice and eligibility for supplemental educational services, the law specifically requires LEAs to use the same data they use for making within-district Title I allocations; historically, most LEAs use school lunch data for that purpose. After examining these new requirements, State and local officials have inquired as to whether they may use school lunch data to

meet these requirements while remaining in compliance with the student privacy provisions of the National School Lunch Act.

### National School Lunch Act

Section 9 of the Richard B. Russell National School Lunch Act (NSLA) establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the National School Lunch Program. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose *aggregate* information about children certified for free and reduced price school meals. Additionally, the statute permits determining officials to disclose *the names of individual children* certified for free and reduced price school meals and the child's eligibility status (whether certified for free meals or reduced price meals) to persons directly connected with the *administration or enforcement of a Federal or State education program*. This information may be disclosed without parental consent.

Because Title I is a *Federal education program*, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price meal eligibility status in order to administer and enforce the new Title I requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials must keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a child's eligibility status to those who have a "need to know" for proper administration and enforcement of a Federal education program. As such, we expect schools to establish procedures that limit access to a child's eligibility status to as few individuals as possible.

We urge school officials, prior to their disclosing information on the school lunch program eligibility of individual students, to enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and educational officials) would adhere. This agreement would specify the names of the individuals who would have access to the information, how the information would be used in implementing Title I requirements, and how the information would be protected from unauthorized uses and third-party disclosures, and would include a statement of the penalties for misuse of the information.

### Other Provisions

We also note that NCLB did not alter other provisions of Title I under which school officials have historically made use of National School Lunch Program data. LEAs are still required to rank, annually, their school attendance areas, by percentage of students from low-income families, in order to determine school eligibility and to make Title I within-district allocations based on the number of poor children in each school attendance

area. They must also determine the amount of funds available to provide services to eligible private school students within the district, again using data on students who are from low-income families. Many LEAs have, for many years, used National School Lunch Program data in making these calculations, which do not involve the release of information on the school lunch eligibility of individual students. They may continue to do so under the new law, while respecting the limitations on the public release of those data described above.

We hope the above information clarifies what we know has been a matter of great concern in States and school districts. If you desire more detailed information about public school choice and supplemental educational services, it can be found at <http://www.ed.gov/offices/OESE/asst.html>.

We will also be providing guidance on Provisions 2 and 3 of the National School Lunch Program and the impact of NCLB on those provisions in the near future.

If we can be of further assistance, please contact one of our offices.

Sincerely,

Signed

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Signed

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