



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Jul 20 2000

Mr. Kenneth Apfel, Commissioner  
Social Security Administration  
Office of the Commissioner  
6401 Security Boulevard  
Baltimore, Maryland 21235

Dear Commissioner Apfel:

We are writing regarding recent activities conducted by the Social Security Administration (SSA) to establish the eligibility and continued eligibility of children with disabilities for benefits under the childhood disability Supplemental Security Income (SSI) program. Because this program is a critical resource for children with disabilities and their families, we agree that ensuring that beneficiaries meet all applicable eligibility criteria is essential to maintaining public support for and the integrity of this vital program.

It has come to our attention that in the past, officials from State Disability Determination Services (DDSs) have interviewed school personnel, or have sought written responses from school personnel, regarding a child's eligibility or continued eligibility for childhood disability SSI benefits. We are concerned about these efforts because responding to these requests could involve the release of personally identifiable information that is generally protected by the Family Educational Rights and Privacy Act (FERPA) from release without consent. 20 U.S.C. §1232(g). Thus, we recommend that SSA take certain actions, as stated later in this letter, to ensure that personally identifiable information in education records is protected.

In particular, teachers and school personnel could not respond to a request for information regarding a child's eligibility under the Individuals with Disabilities Education Act (IDEA) without disclosing information contained in a student's individualized education program, which is an education record. Under FERPA and its implementing regulations at 34 CFR Part 99 and the confidentiality of information requirements of IDEA at 34 CFR §§300.560-300.577, educational agencies are generally prohibited from releasing personally identifiable information in education records without prior written consent of the parent or eligible student, except in statutorily specified circumstances. 20 U.S.C. §1232g(b)(1) and (d); see also 34 CFR §§99.30-31 and 34 CFR §300.571(a) and (b)(1)(i).

Based on the information we have received, it does not appear that any of FERPA's exceptions to the prior written consent provision would permit the nonconsensual

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disclosure by school districts of personally identifiable information from education records regarding children who may be eligible for SSI childhood disability benefits. Further, members of my staff have reviewed a consent form that one State's DDS has used in the past to obtain parental consent for teachers and other school officials to release information to SSA, and we do not believe that such consent would satisfy the requirements of FERPA and Part B of IDEA. See: 34 CFR §§99.30 and 300.571.

Despite the concerns outlined above, we are extremely encouraged by SSA's recent decision to remove from its draft national teacher questionnaire those questions asking teachers and other school professionals about suspected fraud and abuse by beneficiaries of childhood SSI benefits. This recent action has the potential for strengthening positive alliances among parents of children with disabilities, school professionals, and SSA State DDSs. In reviewing this matter, we strongly recommend that SSA take action to ensure that inquiries of teachers and other school officials regarding suspected fraud and abuse are eliminated entirely from the final version of the national teacher questionnaire and from individual questionnaires used by State DDSs as well. We would also recommend to SSA that the October 1998 brochure entitled Childhood Disability: The Supplemental Security Income Program A Guide for School Professionals (SSA publication no. 64-0409) be revised in a manner that is consistent with the explanation set forth above.

If you would like to have further discussions about any of the recommendations set forth in this letter, we would welcome the opportunity to do so. In light of the importance of the SSI childhood disability program, it is especially critical that school officials have access to all relevant information about the SSI program and their obligations under applicable laws administered by both this Department and SSA. To that end, in planning future activities, we would encourage SSA to obtain input from this Department before any relevant guidance is issued to teachers and other school professionals about the SSI program.

We appreciate the opportunity to share with you our views on matters central to the missions of this Department and SSA, and look forward to working with you and your staff. We would be glad to meet with you in the future to discuss this letter and the action(s) SSA will take. If we can be of further assistance or if you have any questions, please contact Hugh Berry in the Office of Policy and Planning in the Office of Special Education and Rehabilitative Services at (202) 205-8121.

Sincerely,

Judith E. Heumann