

November 21, 1997  
L-97-49

TO : John L. Thoresdale  
Director of Policy and Systems

FROM: Steven A. Bartholow  
Deputy General Counsel

SUBJECT: Entitlement of Full-time Students During Summer Months

This is in response to your memorandum of September 29, 1997, requesting clarification as to the procedure to be used to handle cases involving students who attain age 19 in the summer months, i.e., June, July and August. You state that currently the procedure is to allow for continued payment to the student attaining age 19 based on the "intent provision" described in section 216.75 of the Board's regulations. According to your memorandum, the Reconsideration Section believes that the child must be in actual full-time attendance and that, consequently, the intent provision is not applicable if the child attains age 19 in the summer months.

The answer to your first question, (is a student who attains age 19 in a summer month entitled to additional student benefits based on intent to return to school after summer vacation), is yes. Section 216.74 of the Board's regulations provides in pertinent part that:

A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is in full-time attendance at an elementary or secondary school will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled\* \* \*

Section 216.75 of the Board's regulations provides that a child is in full-time attendance at an elementary or secondary school during a period of non-attendance which lasts for four months or less if the child intends to return to school at the end of the period of non-attendance. Therefore, under the Board's regulations, the procedure currently being followed as described in your memorandum is correct.

It should also be noted that regulations issued by the Social Security Administration (SSA) contains these same provisions. Under sections 404.367 and 404.368 of SSA's regulations (20 CFR " 404.367 and 404.368):

A student may receive benefits for a month even though he or she attended school for only part of the month. In additional, an elementary or secondary school student is deemed to

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be in full-time attendance and benefits may be paid for a period of up to four months of nonattendance (for example, during a summer vacation period) if: (1) the student was in full-time attendance immediately before the period of nonattendance began; and (2) either (a) intends to return to full-time attendance immediately following the period of not more than four months, or (b) actually does return to full-time attendance in that time. [1996 Social Security Explained, & 524, P. 236].

With respect to your last question, regarding whether the intent provision should only be applied to initial student entitlement, the analysis discussed in the response to your first question should be followed. That is, under the above-cited regulations of the Board, the procedure is the same whether the child attains age 19 or 18 in a summer month.