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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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HUMAN RESOURCES
DIVISION

MAR 8 1979

Mr. Stanford G. Ross
Commissioner of Social
Security
Department of Health,
Education, and Welfare



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Dear Mr. Ross:

In our survey of States' procedures used to verify the eligibility of 18 to 21 year old students for Aid to Families with Dependent Children (AFDC) program payments, we noted that the student eligibility requirements in the Code of Federal Regulations (CFR) are unclear. This situation may result in erroneous interpretations and unnecessary administrative complications.

Program requirements in the CFR that are specific to AFDC students include the provision that "If a State elects to include in its AFDC program children 18 and over, it must include all children 18 years of age and under 21 who are students regularly attending a school, college, or university, or course of vocational or technical training designed to fit them for gainful employment." (45 CFR 233.90(b)(3)). More directly, "A child may be considered a student regularly attending a school or training course (A) If he is enrolled in and physically attending a *** (as certified by the school or institute attended) program of study or training ***" (45 CFR 233.90(c)(1)(vi)).

States have no authority to impose additional requirements such as performance standards. This was established in Townsend v. Swank (404 U.S. 282 (1971)) in which the U.S. Supreme Court held that the only statutory discretion States have in the matter is to determine, in accordance with standards prescribed by the Secretary of HEW, whether a particular student is a student regularly attending a bona fide school. This limitation on State authority is not clearly stated in the CFR, which leaves it open to misinterpretation.

An example of such a misinterpretation occurred in February 1978 when the Commissioner of the Virginia Department of Welfare asked the

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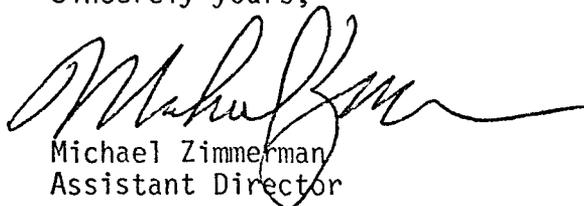
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HEW Philadelphia Regional Office if it would be permissible to impose a passing grade requirement on AFDC students who are 18 to 21 years old. On February 16, 1978, the Assistant Regional Commissioner replied that there was nothing to preclude it. However, after further research, the HEW official withdrew that interpretation on March 14, 1978, citing the 1971 U.S. Supreme Court decision. In June 1978, HEW notified State agencies that a passing grade requirement could not be added as a condition of eligibility for AFDC students. However, the CFR was not changed, thereby leaving the potential for future misinterpretation of the requirements. We discussed this matter with Social Security Administration officials who agreed that the CFR should be changed.

The Dept of HEW should modify the Code of Fed
We recommend that you take action through the Department to modify the CFR to clearly state the existing situation concerning States' authority to determine the eligibility of students 18 to 21 years old for AFDC benefits by incorporating the legal and administrative decisions currently in effect.

We wish to acknowledge the cooperation given to our representatives during the survey. We would appreciate being advised of actions taken or planned on the matter discussed in this report.

Sincerely yours,


Michael Zimmerman
Assistant Director

*State's
AFDC
CFR*