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July 7, 2006

MEMORANDUM

TO: Exceptional Student Education Directors
Student Services Directors

FROM: Bambi J. Lockman

SUBJECT: COMPLIANCE WITH FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) REQUIREMENT FOR PARENTAL CONSENT/MEDICAID CERTIFIED SCHOOL MATCH PROGRAM

In order to increase the quantity and improve the quality of education options, this memorandum will provide you with information regarding FERPA requirements as it pertains to school district practices of determining Medicaid eligibility. The Bureau of Exceptional Education and Student Services has received guidance from the General Counsel's Office in response to our request for an opinion regarding the requirements under FERPA to obtain parental consent for the release of student information in determining Medicaid eligibility.

School districts enrolled as Medicaid providers in the Medicaid Certified School Match Program are able to bill Medicaid and receive reimbursement for health-related services provided to Exceptional Student Education (ESE) students covered under the Individuals with Disabilities Education Act (IDEA). To determine eligibility of these students, the students' personal and ESE information is electronically transmitted to Medicaid's fiscal agent, Affiliated Computer Services.

The question posed to General Counsel was "Under FERPA, what consent is required, if any, from the parent of a potentially eligible student prior to submitting that student's personal and ESE information to Medicaid to determine eligibility?" The General Counsel's opinion concurs with the United States Department of Education's Office of Special Education Programs (OSEP) and Family Policy Compliance Office (FPOC), both of which indicated that "written consent, meeting the requirements of §99.30, FERPA, is required prior to releasing a student's personal and ESE

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Chief

Bureau of Exceptional Education and Student Services

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information to Medicaid. Specifically, §99.30, FERPA, requires that a student's parent provides a signed and dated written consent before an educational agency discloses personally identifiable information from the student's education records. This written consent must specify the records that may be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made. There are certain exceptions to §99.30, FERPA, but both the OSEP and FPCO opinions are clear that they do not apply in this situation."

As a result, it appears that a district's practice of providing notification to a potentially eligible student's parent would not be in compliance with FERPA. Rather, districts should secure written consent that complies with the requirements above.

This opinion clarifies Florida's Department of Education (DOE) policy in this area. Shared Services Network and DOE will work closely with districts in the implementation of this policy and will provide further technical assistance. Districts will be given the opportunity during the Medicaid and Schools Conference to share practices and forms that are in compliance with FERPA.

Thank you in advance for ensuring implementation of this procedure. If you have questions concerning this information, please contact Susan Douglas, Medicaid Consultant, by telephone at (850) 487-8716 or by electronic mail at sdouglas@coedu.usf.edu. Questions can also be directed to Elise Lynch, Program Specialist, by telephone at (850) 245-0478 or by electronic mail at elise.lynch@fldoe.org.

BJL/sd/elt

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