



## Legal Opinion L-2001-08

June 25, 2001

U.S. Railroad Retirement Board  
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**TO** : Philip H. Arnold  
Chief of Records Analysis and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Termination of Student Annuities

This is in response to your memorandum dated May 23, 2001 regarding the effective date of termination of an annuity paid to a full-time student. Specifically, you question whether a student annuitant who attains age 19 during a period of non-attendance should be deemed not to have attained age 19 until the first day of the third month after the month of age 19 attainment. As explained below, it is my opinion that the "age 19 deeming provisions" do not apply where the student child attains age 19 during a period of non-attendance.

The Railroad Retirement Act (RRA) provides for the entitlement of children to survivor annuities where the child is age 18 and is a full-time elementary or secondary student. See 45 U.S.C. § 231a(d)(1)(iii). Entitlement to such an annuity usually terminates on the last day of the month preceding (i) the month during no part of which the child is a full-time elementary or secondary student, or (ii) the month in which he or she attains age 19, whichever is earlier. See 45 U.S.C. § 231d(c)(7). However, a child who attains age nineteen when he or she is a full-time student may be deemed not to have attained age nineteen until the first day of the third month after the month of age nineteen attainment, thereby allowing for the payment of the annuity for up to three additional months. See 45 U.S.C. § 231a(d)(4). In addition to the "age 19 deeming provisions," there are provisions that allow for the deeming of the status of a full-time student during periods of non-attendance. This latter deeming provision is found in subparagraph (B) of paragraph (7) of section 202(d) of the Social Security Act (42 U.S.C. § 402(d)(7)(B), and is incorporated by reference in paragraph 4 of section 2(d) of the RRA (45 U.S.C. § 231a(d)(4)). The full-time student deeming provisions allow for the deeming of the status of a full-time student for a period of up to four calendar months.

You question whether a student who attains age 19 during a period of non-attendance, and who would otherwise be eligible to be deemed a full-time student, loses entitlement to the student annuity due to the attainment of age 19, or remains entitled by way of the "age 19 deeming provisions." The answer to your question is found in section 2(d)(4) of the RRA (45 U.S.C. § 231a(d)(4)), which provides in pertinent part, as follows:

. . . The provisions of paragraph 7 of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the reference therein to the [Commissioner] were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph), but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school \* \* \* shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time . . . [Emphasis added].

As outlined above, the statute specifically provides that, when making a determination as to whether a student may be deemed not to have attained age 19, the provisions for deeming a child to be a full-time student during a period of non-attendance do not apply. In other words, if a student attains age 19 in a month of non-attendance, then that student's entitlement to an annuity as a full-time student terminates effective with the last day of the month preceding the month of age 19 attainment, regardless of the student's intent to resume full time attendance.

This opinion supersedes Legal Opinion L-97-49 issued November 21, 1997.

cc: Director of Policy and Systems