

Colorado Department of Education

Report of Internal Review Committee
(in response to request for review from the Commissioner)
relative to Federal Complaint No. 98.521

1. Cherry Creek School District (District) requested, on 8/24/98, that the Commissioner of the Colorado Department of Education (CDE) review the Remedial Action ordered in the above referenced complaint.
2. CDE State Board Policy 1280 ("Procedure for Resolving Complaints About Federally Funded Programs Administered by the Colorado Department of Education") #15 states, "Any complainant or program participant aggrieved by the final action of the CDE may request that the United States Secretary of Education review the decision of CDE". However, according to the Federal Complaints Officer, such review may not be accepted by the Secretary based on recent legislation. In lieu of this, the CDE Complaints Officer conveyed she is quite open to this issue being reviewed by the Commissioner and is willing to alter her "Remedial Action" based on that review and recommendation by the Commissioner.
3. The Commissioner referred the District's request to an internal review committee consisting of five persons.
4. Committee met on 9/14/98 to review substantive information relative to this complaint. It is the District's position that the following remedial action ordered by CDE is in error and contradictory to the law:

Immediately, as it relates to students with disabilities in out-of-district placements, the District must revise its policies and procedures to allow the District to be deemed the administrative unit of residence upon verification of parental residency by means of documentation (such as court decrees, deeds, rental contracts, etc.) without requiring physical registration of the parent.

5. The issue appears to focus on the **school district of residence**. When students with disabilities are placed by the courts or the Department of Human Services into out-of-district facilities, the student's school district (administrative unit) of **residence** has the responsibility for special education and related services. The district of residence is that district in which the parent or guardian of the child resides.

The **district of residence** has the responsibility for:

- (a) **counting** each of these pupils **for** State and Federal Funds and reporting to CDE the number of pupils not included in the district's pupil enrollment and not actually attending classes in the district but who are receiving educational services in residential child care facilities and other out-of-district placements. [CDE then forwards to the facility delivering education, the proportional amount of the state average per pupil operating revenues (**PPOR**)];
- (b) **assuring** that an Individualized Education Program (IEP) is in place for each of these students and assuring that each of these students is receiving a free appropriate public education (**FAPE**);

- (c) **assuming the costs** of educating such children which includes paying tuition/excess costs... the facility normally bills the district of residence for such costs.
6. The complaint alleges that Cherry Creek School District will not take responsibility as the **district of residence** unless the parent of such child physically goes to the central administration office to verify residence. If such parent does not do so, this precludes the child from being counted and reported for PPOR, from being assured a FAPE and precludes the facility from receiving tuition/excess costs from the district.
7. The District asserts that the **verification of residency** via pertinent documentation needs to be handled by trained staff in a central location. Staff specifically review documentation brought into the central location by the parent, to verify residency. The District believes the established procedure is necessary to the efficiency and accuracy of identifying an individual's residency. The District asserts that its Board of Education, by law, has the power to adopt rules and procedures related to District's admissions process.
8. The conclusion in the complaint states that the **District violates the law by failing to recognize and accept its responsibility** to all those students in out-of-district placement and by making parental physical registration a condition for determination of residency. Such physical registration is required rather than accepting that documentation provided by the courts or the Department of Human Services even though the law states that any court of record, the Department of Human Services, or any other agency authorized to place a child in a residential child care facility shall notify the school district of residence of such child.
9. Analysis of and response to Cherry Creek's request:
- (a) The District asserts that, because CDE did not conclude that the District was in violation of the law relative to the provision of FAPE, there is no rationale for the issuance of a remedial order.
- The committee acknowledges FAPE was provided, but it was at the cost of the facility, not the District. The District was found to violate the law by "failing to recognize and accepts its responsibility..."
- (b) The District asserts that its verification policy is not a violation of the law.
- The committee believes the rigidity of this verification policy is in conflict with the law. Cherry Creek is responsible to the count, assuring FAPE and paying tuition/excess costs. If a parent chooses not to physically register, this does not excuse Cherry Creek from its responsibilities to the child.
- (c) The District asserts its established verification procedure is necessary to the efficiency and accuracy of identifying an individual's residency. Such process, according to the District, has provided a highly accurate database during periods of auditing and allows for more accountability in demographic planning as well as a higher degree of certainty in regard to the receipt and distribution of funds allocated to students.

The committee believes that when the courts or the Department of Human Services provide documentation and determination of district of residence, and notify such district, it is the responsibility of the District to make a residency determination by accepting or refuting that evidence. Such responsibility does not lie with the parent or should not be based on the parent's physical appearance.

- (d) The District asserts that the local Board of Education, by law, has the power to adopt rules and procedures related to the district's admissions process and that it makes accommodations for individuals who may have difficulty with the admissions process.

The committee agrees that the local Board does have the power to adopt such procedures, and the committee takes no issue with the process when utilized with the general population. The committee does believe, however, that the policy should allow flexibility for a very few persons. These persons are more than likely those parents who have moved into the District after the student was placed into an out-of-district facility. The student, therefore, would never have been "registered" with the District; and the parent has no motivation to physically "register" the student.

The committee also notes, that although the District maintains its willingness to accommodate, the complainant stated no accommodations were made relative to four students in one year.

- (e) The District asserts that the number of students, about which this complaint was filed, when balanced against a process that works for over forty thousand students, does not support a finding that the registration process be abandoned.

The committee does not read the findings, conclusions and remedial actions in this complaint to suggest the District's general admissions process be abandoned. Rather, the District was ordered to revise its policies and procedures relative to students with disabilities in out-of-district placements. The committee suggests that the District make its verification process flexible relative to those students who have been deemed residents of the District by the courts or the Department of Human Services by allowing the examination of documentation without requiring physical registration of the parent.