FEDERAL COMPLAINT NUMBER 98.521

FINDINGS AND RECOMMENDATIONS

I. PRELIMINARY MATTERS

A. This complaint was received by the Federal Complaints Coordinator, Colorado Department of Education ("CDE"), on May 18, 1998.

B. The complaint was filed by Mr. [parent], Education Director of Denver Area Youth Services on behalf of [student] and all other students whose district of residence is Cherry Creek Schools, but who are in out-of-district placement.

C. The timeline within which to investigation and resolve this expires on July 17, 1998.

D. The process for receipt, investigation and resolution of the complaints is established pursuant to the authority of the Individuals With Disabilities Education Act 20 U.S.C. 1401 et.seq., ("the Act"), and its implementing regulations concerning state level complaint procedures, 34 C.F.R. 300.660-300.662, and Colorado State Board of Education Policy No. 1280.0.

E. The complaint was brought against the District as a recipient of federal funds under the Act. It is undisputed that the District is a program participant and receives federal funds for the purpose of providing a free appropriate public education ("FAPE") to eligible students with disabilities under the Act.

F. The complaint was accepted for investigation based upon a determination that CDE had jurisdiction over the allegation contained in the complaint pertaining to violations of federal law and rules in a federally funded program administered by CDE.

G. The investigation of the complaint included a review of the documents submitted by the parties; interviews with persons named in those documents or who had information relevant to the complaint; and consideration of relevant case law and federal agency opinion letters.

I. ISSUE

A. STATEMENT OF THE ISSUE:

Whether or not the District has violated the provisions of the Act by failing to provide a FAPE to [student] and to all those students in out-of-district-placement (including those placed in regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes, Colorado School for the Deaf and the Blind, or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services) who are within the District's administrative unit of residence, who are deemed to reside within the District based on where the parent or guardian of the child resides [according to Colorado Statutes [22-1-102(2) and 22-20-107.5 C.R.S. and the Rules for the Administration of the Exceptional Children's Educational Act 2220-R-2.01(1)].

B. RELEVANT STATUTORY AND REGULATORY CITATIONS

20 U.S.C. 1401 (a)(16), (17), (18), (19), (20); and 1412 (2)(B), (4), (6) and 1414, as amended by 20 U.S.C. 602, 612, and 614 and its implementing regulations (as amended by statute), including but not limited to 34 C.F.R. 300.2, 300.7, 300.8, 300.11, 300.14, 300.16, 300.17, 300.121, 300.128, 300.130, 300.131, 300.180, 300.220, 300.235, 300.237, 300.300, 300.340, 300.343, 300.344, 300.345 and 300.350

Fiscal Years 1995-97 State Plan Under part B of the Act

C. FINDINGS

1. At all times relevant to the complaints, the District is receiving funds under the Act pursuant to an approved application for funding.

2. The funds were paid to the District, in part, based on the assurances contained within its application.

3. One of the assurances made by the District is that in accordance with the Act, it will provide a FAPE, including special education and related services, to each eligible student with disabilities within their jurisdiction to meet the unique needs of that child.

4. The complainant alleges that the District mandates parents of students in approved on-grounds schools to register at the District's administrative building, prior to payment for the out-of-district payment. Despite court records or other forms of official documentation of residency, the District refuses to pay for special education and related services unless the parent physically registers the child. Facilities have been told by the District that they are responsible for notifying the parent that they must register their child. Facilities have also been told that they are responsible for informing parents that registration is a contingency for receipt of special education services. On occasion, facility personnel have been responsible for transporting parents who did not have automobiles or easy access to the administrative building, despite the fact that the facility is a considerable distance from the District's administrative building. In some cases, the facility is not able to persuade the parent to go through the registration process, per the District's request. Therefore, the facility does not receive funding for the special education of such child. The complainant also notes that many students placed in out-of-district placement, are there as a result of some issues with the parents; and parents of these students may not have a strong motivation to physically drive to a location and register their children.

5. The District, in its response to the complaint, acknowledges the above procedure, stating that this practice has been in existence approximately twenty-one years. The process initially came about to protect and keep the data base of information as error free as possible. The verification of residency via pertinent documentation is handled by the staff trained to interpret what information may be needed. They specifically review the immunization forms, the proper deeds or rental contracts, guardian documents, court decrees, etc. to verify residency. The District does state that over the years, it has accommodated, and continues to accommodate individuals who have had difficulties with the registration process.

6. The following information from Colorado School Laws, Title 22, C.R.S. is applicable:

22-1-102

A child shall be deemed to reside in a school district if: both his parents, or the survivor of them, or the one of them to whom custody of such child has been awarded by any court of competent jurisdiction resides in the school district.

22-20-107.5

Notwithstanding the provisions of section 22-1-102(2), for the purposes of this article the district of residence of a child with a disability is the school district in which such child lives on a day-to-day basis; except that, if a child with a disability is living at one of the regional centers including satellite homes of such centers operated by the department of human services or any other facility operated by or under contract to the department of human services or at the Colorado mental health institute at Pueblo or Fort Logan, a group care facility or home, or the school for the deaf and the blind, such child shall be deemed to reside where the parent or guardian of such child resides… If there is a dispute as to which school district constitutes the district of residence, the commissioner of education shall have the authority to determine questions of residency and thus jurisdiction after reviewing necessary details involved in the determination of residency.

22-20-108

The agency responsible for out-of-home placement of a child with a disability shall work cooperatively… The costs of educating such children shall be the responsibility of the school district of residence and such school district shall pay to the administrative unit of attendance the tuition cost approved by the state board.

When a child is placed without the written approval of the school district of residence, any excess costs shall be the financial responsibility of the court, parent, guardian, or agency making such placement. It the school district of residence does not provide written notice of disapproval within fifteen days of notification, the placement shall be deemed to be approved.

22-54-109

Districts paying tuition for pupils of residence in the district to attend public schools in other Colorado school districts…shall report and be entitled to support for such pupils.

Any court of record, the department of social 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, the district in which the child will receive educational services, and the department of education of such placement within fifteen days after the placement.

Every school district shall report to the department of education the number of pupils not included in the district's pupil enrollment but who are receiving educational services [elsewhere]. The department of education shall annually withhold an amount equal to the district of residence's per pupil operating revenues ("PPOR") for each such child counted by local school districts but not actually attending classes in the district of residence and included on the roll of out-of-district placed children. The department shall forward to the district or state institution or facility delivering the education, on a monthly basis, the proportional amount of the state average per pupil operating revenues.

> For children with disabilities residing in a particular school district but receiving an education in another school district, a state institution or facility, a residential child care facility, or an eligible nonprofit organization within Colorado, the state average per pupil operating revenue shall be the district of residence's total responsibility under this article for the education of that child.

7. The following is written in the Rules for the Administration of the Exceptional Children's Education Act at 2220-R-2.03(2)(a):

> When a child with a disability is placed, by a public agency, into a group home, community centered board, or eligible facility, the administrative unit of residence is responsible for paying the educational costs over and above applicable revenues. The district of residence should count the child for state and federal funds. The tuition costs shall be determined by the Department of Education for each…[agency]. Such tuition costs shall be the maximum amount the administrative unit of residence shall be obligated to pay for the special education program… When a child with a disability is placed without the written approval of the school district of residence, any tuition costs shall be the financial responsibility of the court, parent, guardian, or agency making such placement. If the school district of residence does not provide written notice of disapproval within fifteen days of notification, the placement shall be deemed appropriate. A decision to disapprove a placement must be based solely on the unavailability of appropriate educational services. If the placement is disapproved, the district of residence must assure that the child receives a free appropriate public education until an appropriate placement can be determined.

8. An informal interview with personnel from other districts, suggests that Cherry Creek Schools is the only known administrative unit out of fifty-four units, to require such registration.

9. [Student] and other students placed into Denver Area Youth Services do receive an appropriate education, even when the district of residence does not fund such. Such costs are simply absorbed by the facility, according to the complainant. However this is a drain on the facility's resources; and unfair to the other districts of residence who do pay for special education.

III. CONCLUSIONS

The District has not violated the provisions of the Act by failing to provide a FAPE to [student] and to all those students in out-of-district placement who are within the District's administrative unit of residence, who are deemed to reside within the District based on where the parent or guardian of the child resides, because – even though the District has not accepted financial responsibility for all such students – the students have received FAPE as a result of the facilities into which they were placed, simply absorbing those costs.

The District has violated the provisions of the Act by failing to recognize and accept its responsibility to all those students in out-of-district placement (including those placed in regional centers, mental health institutes, residential child care facilities, hospitals, group care facilities or homes, Colorado School For the Deaf and the Blind, or in a facility formerly operated by or under contract to the Department of Institutions and now transferred to the Department of Human Services) who are within the District's administrative unit of

residence, who are deemed to reside within the District based on where the parent or guardian of the child resides. There is nothing within the Act or any Colorado School Law which suggests a district may make parental registration a condition on which “district of residence” is determined. The law simply indicates, in these circumstances, “the child shall be deemed to reside where the parent or guardian of such child resides” and “the district of residence is responsible for paying the educational costs over and above applicable revenues”. When notified of an out-of-district placement, the placement is deemed to be approved if the District does not provide written notice of disapproval within fifteen days of notification. A decision to disapprove must be based solely on the unavailability of appropriate educational services, and may not be based on parental refusal to register.

IV. REMEDIAL ACTION

Immediately, as it relates to students with disabilities in out-of-district placements, the District must revise it 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.

Dated this 17th day of July, 1998

____

Carol Amon, Federal Complaints Investigator