



COLORADO DEPARTMENT OF EDUCATION

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MEMO

To: Superintendents of Schools
Directors of BOCES
School Principals
Other Interested Persons

From: Dwight Jones 
Commissioner of Education

Re: Rights of Immigrant Students to Enroll in Local Public Schools

Date: October 10, 2009

Colorado Department of Education (CDE) staff members have received a number of inquiries from school district personnel regarding the rights of immigrant students to enroll in local public schools and whether or not those rights were limited in any way by recent Congressional legislation. Despite a number of legislative proposals that may have impacted education programs for immigrant students, no legislation was adopted that would curtail their right to a public education.

The "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" specifically stated at §U.S.C. 1643 (a)(2), "(n) nothing in this title may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United State under *Plyler v. Doe* (457 U.S. 202)(1982).

The decision in *Plyler* struck down a Texas statute which allowed local school districts to deny admissions to students who were not legally admitted into the United States. The court noted that such

actions would impose a “lifetime of hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” The court found invalid the State’s justification that by denying admission to children not legally residing in the United States it could better devote its limited resources for the education of its lawful residents. The principles enunciated in *Plyler* continue to be valid today.

Students who are residents of a Colorado School district may not be denied admission to the public schools based on their lawful or unlawful immigration status. Residency is defined in section 22-1-102(2), C.R.S. as follows:

(2) A child shall be deemed to reside in a school district if:

(a) Both his or her parents, or the survivor of them, or the one of them with whom such child resides a majority of the time pursuant to an order of any court of competent jurisdiction resides in the school district;

(b) The legally appointed guardian of his person resides in the school district;

(c) After emancipation by his parents, or the survivor thereof, from their or his control, and he has no guardian, he lives within the school district;

(d) In the judgment of the board of education of the school district wherein the child lives, the child has been abandoned by his parents;

(e) The child has become permanently dependent for his maintenance and support on someone other than his nonresident parents, or upon any charitable organization, if the dependent child is actually to make his home and receive his support within the school district where he desires to attend;

(f) If one of the child's parents or the guardian of his person is a public officer or employee living temporarily for the performance of his duties in a school district other than that of his residence. Unless the parents of a child are permanently separated, the residence of the husband shall be deemed to be the residence of the child, but, if the parents have permanently separated, the residence of the child shall be that of the parent with whom the child actually lives.

(g) Regardless of the residence of the parents, if any, the child adopts a dwelling place within the district with the intent to remain there indefinitely and with the intent not to return to the dwelling place from which he came, and regularly eats or sleeps there, or both, during the entire school year as defined in section 22-1-112; but the child shall be deemed not to have the requisite intent if he regularly returns to another dwelling place during summer vacations or weekends;

(h) The child is found to be homeless pursuant to the provisions of section 22-1-102.5 and the child presently seeks shelter or is located in the school district; except that a homeless child shall be deemed to reside in another school district if the child attended school in such school district at the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child pursuant to section 22-33-103.5, and the child chooses to continue attendance in such other school district;

(i) The child is found to have become homeless pursuant to the provisions of section 22-1-102.5 during a period that school is not in session, the child remains homeless, and the child presently seeks shelter or is located in the school district; except that the child shall be deemed to reside in another school district if the child attended school in such school district immediately prior to the time the child became homeless, the child remains homeless, the affected school districts find that attendance in such other school district is in the best interests of the child pursuant to section 22-33-103.5, and the child chooses to continue attendance in such other school district.

Determination of legality of a student's immigration status is not a duty of the local school district nor is it necessary in determining the residency of a child. Undocumented children have the same right to attend public schools as do U.S. citizens and permanent residents. Further, the students' parents and district officials have an obligation to see that the students attend school pursuant to the Colorado School Attendance Law. Additionally, nothing in the federal law prohibits a school district from sending information it may have to the Immigration and Naturalization Service, but it can not require that information regarding the immigration status, lawful or unlawful, of an alien be provided as a condition of receiving a public education.

It is the responsibility of each school administrator to review district policies to assure that they are not in conflict with the Supreme Court decisions and state statutory provisions.

Should you have further questions in these areas, please contact the CDE Office of Regional Educational Services at (303) 866- 6608 or the CDE Office of Language, Culture and Equity at (303) 866-6963 or (303) 866-6753.