

Sister in the struggle **Kelley Coffman-Lee** wrote to ask about specific legislation that supports parental rights. She had received a letter from Cherry Creek superintendent Monte Moses supporting the requirement of CSAP testing. I think it is worth while for us all to have access to this information. Much of it is on our website at [www.thecebe.org](http://www.thecebe.org). However, I think it is also valuable that I circulate the letter I wrote to her to each of you. There is always the hope that parents can unite and raise their voices knowing that there is law on our side. (And who knows, perhaps we can nurture the seeds of a class action law suit.) Here is my letter to Kelley:

Dear Kelley,

Well, this is just the kind of thoughtless position taken by school administrators that outrages my sense of justice and makes my heart race. There are a number of legal resources we can utilize. First, let's go to the State Constitution.

Article IX, Section 15 says:

"The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts." (Underlining is mine.)

Now, in February of 2000, the legislature passed SB 186 which is the horror story being lived throughout Colorado requiring all students to take CSAP testing. This requirement flies in the face of the State Constitution because it usurps the local control of the school boards.

In fact, there is case law to support school districts taking a stand. In Cary v. Bd of Education, 598 F.2d 535 (10th Cir. 1979) the court stated that "it is legitimate for the curriculum of the school district to reflect the value system and educational emphasis which are the collective will of those whose children are being educated and who are paying the costs.

But wait, Kelley, there's more:

In Owens v. Colo. Cong of Parents, 92 P3d 933 (Colo. 2004) the court said that the constitutional division of power between the state and local boards is not measured by funding. The court rejected the defendant's argument that with greater state funding comes greater state control over educational policy.

But wait, there's more:

Article IX, Section 16 of the State Constitution states the following:

Neither the general assembly nor the state board of education shall have the power to prescribe textbooks to be used in the public schools.

A very strong case can be made that CSAP testing falls within this restriction - that CSAP tests and all their surrounding materials are state mandated and thus violate this section of the constitution.

But wait, Kelley, there is even more. Here is the most resounding piece of legislation that school districts continually ignore:

Colorado Revised Statutes - 22-1-123 (5) (a) states:

A school or school district employee who requires participation in a survey, analysis, or evaluation in a public school's curriculum or other official school activity shall obtain the written consent of a student's parent or legal guardian prior to the student being given any survey, analysis, or evaluation intended to reveal information, whether the information is personally identifiable or not, concerning the student or the student's parent's or legal guardian's:

(II) Mental and psychological conditions potentially embarrassing to the student or the student's family.

(The underlinings are mine.)

The argument is there for the making: The schools are there to serve our children and the community in which they live. The children are not there to serve our schools.

And finally, Kelley, Moses' argument that testing was initiated to measure student growth is specious, because the legislators were influenced tremendously by lobbyists from McGraw-Hill - The ruse was that CSAP testing would measure academic growth, the truth was that the real growth would be in the profits of McGraw-Hill.

Thanks for keeping me posted, and thank you so much for your courage, integrity and activism.  
In great appreciation,  
Don