



TEXAS EDUCATION AGENCY

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Shirley J. Neeley, Ed.D.
Commissioner

October 18, 2004

Ms. Kathleen Wells
Texas Association of School Boards
(TASB)
Post Office Box 400
Austin, Texas 78767-0400

Dear Ms. Wells:

This letter is being sent to school districts the Agency believes have existing school desegregation orders, for the purpose of explaining our position on student transfers required under Title I and the No Child Left Behind Act (NCLB) in districts operating under court-ordered desegregation plans. NCLB requires school districts to offer transfer options within the district to students who would otherwise be assigned to a campus in school improvement status (two consecutive years not meeting adequate yearly progress). Several districts have contacted us because some or all of the transfers required by NCLB may conflict with their local desegregation orders. We have spoken with staff from both the United States Department of Justice and the United States Department of Education and can offer the following guidance:

1. To the extent a transfer required under NCLB does not conflict with a school district's desegregation order, the existence of the order is not a basis for denying the transfer.
2. A transfer that conflicts with a desegregation order should *not* be granted pending a court decision on a request for modification of the order. The district remains obligated to inform parents of the right to transfer under NCLB and to offer as many alternatives as possible for transfer that do not conflict with the order.
3. To the extent a desegregation order limits or prohibits transfers within a district that are required to be offered under NCLB, the district should promptly take appropriate steps to modify the order to allow all transfers required by NCLB. Districts that are not currently required to grant transfers under NCLB are under no obligation to attempt to modify a desegregation order.
4. The agency will expect districts to obtain a trial court ruling on transfers under NCLB in the context of a desegregation order as quickly as possible. Upon being notified of a campus required to offer transfer options, a district must obtain a ruling on the applicability of the order to transfers required under NCLB for *all campuses within the*

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"

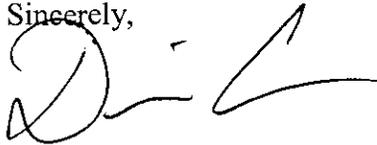
district, including those which may not be required under NCLB to offer transfers. Failure to comply with these requirements may result in suspension or forfeiture of all Title I funds. We realize the uncertainties of litigating this type of order and have not attempted to set hard and fast deadlines. However, a district should be prepared to demonstrate to TEA and to federal authorities that it pursued a ruling expeditiously.

5. To the extent a court declines to modify an existing desegregation order to allow all transfers required under NCLB, the district should notify both this agency and the U.S. Department of Education.

Finally, although districts are encouraged to support interdistrict transfers in circumstances where few or no intradistrict options for transfer exist, NCLB does not require interdistrict transfers. Should any desegregation orders only impact transfers between districts, there is no obligation to file for a modification. The agency will continue to implement the existing statewide restrictions on interdistrict transfers under Civil Action 5281 in the same manner as it has previously.

We appreciate the willingness of the Departments of Justice and Education to assist us in resolving these issues. Should you have additional questions, please feel free to contact me or Sandy Lowe, senior attorney, at (512) 463-9720.

Sincerely,

A handwritten signature in black ink, appearing to read "David Anderson", with a long horizontal flourish extending to the right.

David Anderson
General Counsel