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TEA. EDGEWOOD V. KIRBY
(ANDERSON)

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Texas Education Agency

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

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April 4, 1991

TO THE ADMINISTRATOR ADDRESSED:

Enclosed is a copy of the most recent order of Judge McCown concerning Edgewood v. Kirby (Anderson).

Please note that the injunction against the state's distribution of foundation funds is in effect as of April 1, 1991. However, the instructions in my March 25, 1991 letter to the administrator addressed have not changed. Schools are to remain open.

Another hearing has been set for April 15. The agency will continue to advise you as developments occur.

Sincerely,

Thomas E. Anderson Jr.

Thomas E. Anderson, Jr.
Interim Commissioner of Education

consideration is granted. The court appoints Lynn Moak to draft a plan to distribute present and future state appropriations in the most efficient manner possible. The plan should have two alternative dates: 1) as soon as possible, and 2) September 1, 1991. In developing his plan, Mr. Moak shall consult with all parties. All parties shall cooperate with Mr. Moak. The plan shall be kept confidential until further order of the court.

4. The Comptroller shall determine each school districts present cash balance, borrowing ability, and total contractual obligations through September 1, 1991. In addition, the Comptroller shall devise a plan for implementing the miscellaneous section of the court's Revised Final Judgment. In developing his plan, the Comptroller shall consult with all parties.

5. All parties shall appear before the court on April 15, 1991, at 9:00 a.m. at which time the court will a) hear the Attorney General's report on legislative efforts to comply with our Supreme Court's mandate; b) announce its decision on matters under advisement; c) hear the report of Mr. Moak regarding his plan and consider ordering it implemented; d) hear the report of the Comptroller regarding his plan and consider ordering it implemented; and e) hear any other pending motions.

Signed this 2d day of April, 1991.



F. SCOTT McCOWN
Judge Presiding

1 Now, I am going to make the following orders. First, the
2 motion to modify the injunction and extend the time will
3 be taken under advisement.

4 Second, the motion to clarify or modify the
5 injunction to cut off local funds will be taken under
6 advisement.

7 Third, I am going to make some further orders
8 in addition to the previous orders of the court. I hereby
9 appoint Lynn Moak, who I have great confidence in, as
10 court appointed expert to update the master's plan to do
11 two things, to equalize within existing state dollars,
12 with the date to begin as early as it's logistically
13 feasible and with a date to begin on September 1st.

14 Second, I am ordering the comptroller of
15 public accounts to determine the cash balances of each of
16 our independent school districts, the borrowing abilities
17 of each of our independent school districts, and the
18 contractual obligations of each of our independent school
19 districts and report those figures to Mr. Moak and to the
20 court, and to the extent it's feasible I want Mr. Moak to
21 incorporate those statistics into his plan. So I am
22 granting Mr. Gray's oral motion for the appointment of an
23 expert.

24 I am setting a hearing for April 15th at 9:00
25 o'clock a.m. in this courtroom and at that hearing I will

1 hear the status of legislative efforts to comply with the
2 mandate of the Supreme Court. I will announce my decision
3 on the motions I have taken under advisement then, if I do
4 not announce them earlier.

5 I will hear the status report from Mr. Moak,
6 the court appointed expert, as well as from the
7 comptroller. I think it would be wise for Mr. Richards
8 and Mr. Gray and Mr. Kauffman to follow-up with a motion
9 to certify a defendant class so that all the school
10 districts of Texas are given notice and brought before the
11 court and you-all need to talk about the logistics of
12 that.

13 With regard to the intervention that was
14 filed today and any other interventions that are filed, if
15 there are motions to, say, strike those interventions,
16 those will be taken up on the 15th. And if those
17 interventions are not stricken then the relief at the
18 intervenor's request will also be taken up on the 15th. I
19 want to emphasize that in asking Mr. Moak to draw a plan
20 and in asking the comptroller to gather data I am not yet
21 saying what, if anything, I will do with the plan or the
22 data, and I would like briefs from the parties regarding
23 the authority of the court to implement its own plan until
24 such time as the legislature acts and also briefs from the
25 parties as to the authority of the court to distribute

1 funds along the lines outlined by Mr. Hutchinson in his
2 remarks. And I guess in addition I need a plan from the
3 comptroller as to how he would distribute such funds if
4 the court chose to order him to do so.

5 MS. HUNTER: Under the miscellaneous
6 funds?

7 THE COURT: Yes, how the comptroller
8 would logistically -- how he would do what Mr. Hutchinson
9 outlined. Any questions, Mr. Kauffman?

10 MR. KAUFFMAN: Yes, Your Honor, in
11 terms of Mr. Moak's designing a plan under current
12 revenues, the current revenues under Senate Bill 1 include
13 more funds than -- more state funds than that available
14 within '90-'91 year. For the '91-'92 year I think they
15 projected approximately an additional \$500 million over
16 the state appropriation. It would be helpful to us and to
17 Mr. Moak if you should specify whether you are talking
18 about existing state funds as spent in 1990-91 or as
19 already passed by the legislature to be spent in '91-'92.

20 THE COURT: Well, what I want from
21 Mr. Moak is both ways. If the court wants to redirect the
22 funds immediately beginning with April 25th or however
23 soon after logistically we can do it, I want that plan and
24 if the court is going to put off that I want to know how
25 quickly we can do it and what the plan would look like.

1 Let me say, I am sure with regard to both a
2 plan for Mr. Moak as well as a plan from the comptroller
3 that there are going to be a lot of questions and the
4 court will make itself available for a telephone
5 conference call as we go along but I don't think we can
6 usefully sort this out today. Mr. Gray?

7 MR. GRAY: Nothing, Your Honor, other
8 than I assume parties will have some degree of access to
9 Mr. Moak?

10 THE COURT: Yes, Mr. Moak should
11 cooperate with all of the parties in developing the plan.

12 MR. O'HANLON: Your Honor, with
13 respect -- we have a logistical problem if we wait -- I
14 mean, we need to go forward with the assessment if we are
15 going to make the districts -- given the circumstances of
16 some districts we need to get -- literally be able to what
17 we can to make certain the presentation also to you as a
18 fact on the 15th, if we are going to make the financial
19 circumstances -- we have given some thought to doing it.

20 THE COURT: I anticipate that the
21 hearing on the 15th will be an evidentiary hearing. I
22 will be happy to hear Mr. Kauffman's witnesses at that
23 time on his motion, I'll be happy to hear witnesses in
24 support of or in opposition to whatever plan Mr. Moak
25 develops.

1 understand, as of today the court is not cutting off state
2 funds, is that correct?

3 THE COURT: The injunction is in
4 effect right now, injunction is in effect right now and
5 what I have under advisement is the state's motion to stay
6 injunction, I have under advisement Mr. Kauffman's motion
7 to apply it to local funds, and in addition I am
8 appointing an expert, Mr. Moak, to draw a power
9 equalization plan about existing resources and I am asking
10 the comptroller to gather the information as well as
11 develop a plan to disburse money in accordance with Mr.
12 Hutchinson's view of the miscellaneous section. Should I
13 decide on the 15th, I will then implement Mr. Moak's plan
14 perhaps or perhaps with modifications suggested by the
15 parties and should I decide on the 15th I can either
16 accept or reject the controller's plan.

17 So I am putting these matters off of what I
18 am going to do with these two plans drawn by Mr. Moak and
19 the comptroller until the 15th as well as putting off the
20 motions I have under advisement. At this juncture
21 everybody needs to do a lot of work. Mr. Moak needs to
22 figure out how to power equalize the money we have on
23 hand, comptroller needs to figure out how much money is
24 out there and how much money people would have to have.
25 Everybody is going to have to do some legal briefing. I

1 am going to have to contemplate these matters. When we
2 come back on the 15th I think these matters will be ripe
3 for decision and I can quickly decide these matters and we
4 can get on about our business if the legislature at any
5 point between now and 15th passes a bill and the Governor
6 signs it into law, then we can take that matter up on the
7 15th as well.

8 Mr. Hoodenpyle did you have any questions?

9 MR. HOODENPYLE: Your Honor, there's
10 one area, and that's the Federal Handicap Statute, 94.142,
11 that says we must give students free appropriate
12 education. I assume Mr. Moak is going to work that into
13 his assessment, is that correct?

14 THE COURT: You need -- those kind of
15 details need to be brought to Mr. Moak's attention, and
16 Advocacy, ^{Inc.} I think, is an amicus before the court and
17 certainly they can alert the court to their views of
18 compliance with federal law.

19 Ms. Hunter, I would appreciate it if you
20 would ask the attorney general to officially advise the
21 governor and lieutenant governor and speaker that the
22 court is very serious about implementing its judgment, and
23 take back the message that they are all our children and
24 that the funds must be disbursed equally.

25 Court will be adjourned.