September 30, 1970

Hon. Richard D. Wells, Superintendent
Department of Public Instruction
Room 229
State House
Indianapolis, Indiana 46204

Dear Superintendent Wells:

This is in response to your request for my Official Opinion concerning whether or not a newly constituted (by virtue of a school board election) school board may reverse a student transfer which had been legally approved by its predecessor school board.

ANALYSIS

The facts which you presented are as follows: The parents of the child applied for a transfer from the resident school corporation, and the local superintendent of schools denied the transfer. The parents then appealed the superintendent's decision to the local board of school trustees. The local board voted to approve the parents' request for transfer. One month later a newly constituted board of school trustees rescinded the action taken on this matter without comment, without notice to the parents that the matter was to be reconsidered, and with no reasons stated by the board, in the record, as to why the transfer was denied, or why the grounds required by statute for such transfer did not exist.

An Indiana statute provides that whenever any child can be better accommodated in the public schools of another school corporation of this state that the school trustee or board of school trustees, or board of school commissioners of the school corporation in which the child resides, may grant an order of transfer. Acts of 1921, Ch. 253, Sec. 1, as amended and found in Burns' (1948 Repl.), Section 28-3701.

Indiana legal procedure further provides for a method of appeal when a parent's request for transfer is denied by the school board. Courts have held that the right of a parent and
child to a transfer would be protected in an appeal to the Indiana Supreme Court as a right existing for such parent and child where the action of the school officials was arbitrary and capricious. State ex rel Smitherman v. Davis (1958), 238 Ind. 563, 151 N. E. (2d) 495.

The right to appeal a denial of transfer is given to the parents by statute. See: Acts of 1901, Ch. 204, Sec. 3, as last amended by Acts of 1965, Ch. 273, Sec. 1, and found in Burns’ (1968 Supp.), Section 28-3705. Under this statute, furthermore, no right of appeal is given to a school board that has granted a transfer. There is no inherent right of appeal to an administrative board other than that which is given by statute. 1957 O. A. G. 52, page 252.

CONCLUSION

From the factual situation presented by you, it is my opinion in the circumstances described that the transfer order entered by the first school board prevailed. The succeeding school board lacked legal authority arbitrarily to override the previous board’s action.