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June 16, 2022

VIA ELECTRONIC MAIL (DVERMILL@K12.WV.US)

W. Clayton Burch  
State Superintendent of Schools  
West Virginia Department of Education  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Dear Superintendent Burch,

It has come to my attention that the West Virginia Department of Education is instructing, enabling, and requiring West Virginia Boards of Education (“BOE”) to create West Virginian Education Information System (“WVEIS”) identification numbers for homeschooled students. Contrary to your assurances otherwise, it appears that you have authorized your staff to permit or require county staff to enter information into WVEIS, for the purpose of “tracking” assessment completion for home educated students. Because this is not authorized by law, I urge you to instruct your staff to cease and desist immediately the storage of such data and that any such data be deleted for ALL home educated students.

W.Va Code § 18-2-5h contains no authorization for the State Board of Education or the State Department of Education to track, store, create or otherwise include data relating to home educated students who have not been enrolled in public school previously, are not seeking sports access, or are not participating or enrolled in public school activities. There is also no authority for state agents to store assessment information for any homeschooled student regardless of whether they are enrolled in a school class or participating in sports activity.

W.Va Code § 18-2-5h requires the State Board to take important actions such as notifying the Governor AND legislature when collecting new data, to create a data dictionary, to create policies relating to data security and disclosure and other measures



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which I understand have NOT taken place. W.Va Code § 18-2-5h and other laws such as FERPA at the federal level specify how government authorities are to treat personal data in the education area. It does not appear that these laws are being followed.

On behalf of our members and the homeschooling community in West Virginia, I urgently request that you, as the State Superintendent of Schools, take immediate action to order West Virginia Department of Education staff to take immediate action to cease and desist from requiring, enabling, supporting, instructing, permitting or otherwise assisting West Virginia county BOEs, or any other person or entity, in accessing or using the WVEIS for the purpose of inputting or storing data, or otherwise tracking assessments or any other information of homeschooled students who are not accessing sports or classes at the public school. I further request that any such data entered be immediately and irrevocably deleted or removed from the database. I request that you act on this matter immediately and inform me as soon as you do so.

I first brought this matter to your attention by informing Senator Patricia Rucker, the Chair of the Senate Education Committee, about this practice. I first learned about the use of WVEIS related to homeschooled students from HSLDA members in the summer of 2021. I informed Senator Rucker that this use of WVEIS was not, in my opinion, a lawful use of the WVEIS. Senator Rucker assured me that she would bring this to your attention with a request that the matter be addressed. This interaction between you and Senator Rucker took place in September 2021. It is my understanding that Senator Rucker did bring this matter to your attention and that you assured Senator Rucker that you would address this issue. It is my understanding that you specifically agreed to inform county BOEs not to use WVEIS for this purpose and that you would instruct your staff not to use the WVEIS to track homeschooled student data.

In October 2021, I, along with other West Virginia homeschooling advocates, including (now) Delegate Kathie Hess Crouse and Christian Home Educators of West Virginia (“CHEWV”) legislative liaison, John Carey, met you and your staff at your building in Charleston. At that time, you assured me personally that you would issue a letter to the county BOEs instructing them not to use the WVEIS system to track homeschoolers. Your staff allowed me to view this letter. At that meeting I brought to the attention of your staff the fact that the West Virginia Code does not permit the storage of homeschooled student information.

In a March 9, 2022, letter I again pointed out that there is no provision in West Virginia law that authorizes any state agency to issue a WVEIS number or otherwise track homeschooling families in a state database. At that time, I presumed that the issue presented in that letter was an outlier situation resulting from administrative oversight.

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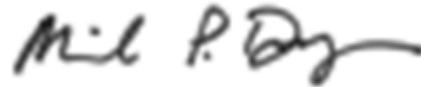
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Home School Legal Defense Association is committed to defending the constitutional rights of parents who have elected to educate their children at home. In most cases we are successful in resolving differences between our members and public-school officials, without having to resort to litigation. Accordingly, I suggest that you and your staff avoid taking any actions which might infringe upon the exercise of the constitutional rights of homeschooling families in their districts as have been expressly recognized by several U.S. Supreme Court decisions.

I respectfully urge that you take immediate action as outlined in this letter.

Thank you for your immediate attention to this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Michael P. Donnelly". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael P. Donnelly, J.D., LL.M.  
Senior Counsel, Global Outreach

Cc:

Senate President Craig Blair

House Speaker Roger Hanshaw

Senate Majority Leader Dr. Thomas Takubo

House Majority Leader Amy Summers

Senate Education Chair Senator Patricia Rucker

Senate Education Vice Chair – Rollan Roberts

House education Chair Dr. Joseph Ellington

House Education Vice Chair Joseph Stadtler

MPD/sdm