
Educational Stability for Homeless Children and Children in Foster Care



April 2017

**West Virginia Department of Education and
West Virginia Department of Health and Human Resources
Joint Guidance on Educational Stability
for Homeless Children and Children in Foster Care**

Introduction:

Children experiencing homelessness or placement in foster care experience higher levels of school instability than their peers and require additional supports and services from schools and governmental agencies to improve educational outcomes. The purpose of this document is to provide guidance to West Virginia school systems and child welfare agencies that will enable them to provide required supports and services to homeless children and children in foster care.

Federal directives are provided through three key legislative statutes which include the McKinney-Vento Act (1988), the Fostering Connections Act (2008) and the Every Student Succeeds Act (ESSA) (2015). This joint guidance document will incorporate requirements from all three federal laws in a manner that allows for effective and collaborative implementation of educational stability provisions. Both the McKinney-Vento Act and the Every Student Succeeds Act offer provisions that make homeless/foster children eligible to request School of Origin placement. This document provides guidance to facilitate this process.

Definition of Homelessness:

Section 725 of the McKinney-Vento Act, as amended by ESSA, defines children and youth to be served under this law as follows: The term "homeless children and youths" is defined as individuals who lack a fixed, regular, and adequate nighttime residence. The term includes: (1) Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals; (2) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (3) Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; (4) Migratory children (as defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because they are living in circumstances described in this definition; and, (5) Unaccompanied youth, defined as "youth not in the physical custody of a parent or guardian" §725(6)).

Definition of Children in Foster Care:

The requirements for ensuring educational stability for children in foster care under ESSA apply to all children in foster care enrolled in West Virginia public schools. Consistent with the Fostering Connections Act, the term “foster care” means 24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Educational Stability Process:

The educational stability process has the purpose of helping homeless/foster children continue their education without disruption, maintain important relationships with peers and adults, and have the opportunity to achieve college and career readiness. When the School of Origin and the School of Residence are in the same Local Education Agency (LEA), also known as the county school system, the LEA must collaborate with appropriate agencies, as listed under the participant section, to develop processes and procedures to ensure educational stability for children experiencing homelessness and in foster care. Three key factors in providing educational stability include:

- Best Interest Determination (BID) – A decision-making process for assessing the best school placement for a homeless/foster child;
- Transportation to School of Origin – An outline detailing how “School of Origin” transportation will be provided, arranged and funded;
- Immediate Enrollment – A description of immediate enrollment processes that ensure the transfer and review of records from sending to receiving schools.

1. Best Interest Determination:

The ***School of Residence*** is the school designated for the geographic attendance area that encompasses a child’s current residence. All public school students in West Virginia are assigned to a school of residence based on each county school system’s attendance area map.

The ***School of Origin*** is the school in which a child is enrolled:

- prior to being identified as homeless, or
- prior to placement in foster care.

A homeless/foster child's School of Origin may also be their School of Residence after they are displaced from their home due to residential instability or placement in foster care. However, homelessness and foster care placement often result in a residence change that is outside a child's original school's attendance area. In these situations, a sudden change in school can lead to educational instability that will result in negative impact on achievement, attendance, behavior as well as emotional and physical well-being. An LEA (in collaboration with families, child welfare agencies and other partners, as appropriate) must ensure that a homeless/foster child remains in his or her School of Origin unless a determination is made that it is not in the child's best interest.

Considerations: When determining a homeless/foster child's best school placement the relevant collaborators should consider multiple factors. Though the specific factors may vary depending on context, relevant collaborators must make a holistic and well-informed determination based on a variety of student-centered factors which include but are not limited to:

- Preferences of the child (when age appropriate);
- Preferences of the child's parent(s) or education decision maker(s);
- The child's attachment to the School of Origin, including meaningful relationships with staff and peers;
- Placement of the child's sibling(s);
- Influence of the School of Origin's climate on the child, including safety;
- The availability and quality of services in the School of Origin to meet the child's educational and social emotional needs;
- History of school transfers and how they have impacted the child;
- How the length of the commute would impact the child, based on the child's developmental stage and age;
- Whether services required in a child's Individual Education Plan (IEP), Section 504 plan of the Rehabilitation Act or English Learner (EL) plan can be maintained at present levels at the School of Residence; and
- Consideration for meeting the immediate short-term need for educational stability while also considering the long-term plan for facilitating a smooth educational transition for the child when housing/family care is permanent.

Timeline: The LEA must have processes in place to facilitate the Best Interest Determination as quickly as possible in order to prevent a disruption in educational services for the child. To the extent feasible and appropriate, the LEA must ensure that a child remains in his or her School of Origin while this determination is being made.

Participants: The LEA's relevant collaborators for Best Interest Determinations should be:

- BID for homeless children – the child (depending on the age and developmental level), the child's family, LEA homeless liaison, school administration, the child's teachers/counselor and/or other relevant school personnel (i.e. school staff responsible

for IEP, EL plans or Section 504 plans), district transportation director, others as deemed appropriate.

- BID for foster children - the child (depending on the age and developmental level), the child's foster family, the child's biological family when appropriate, the child's WVDHHR community service manager, Multi-Disciplinary Team members, LEA point of contact, school administration, the child's teachers and/or other relevant school personnel (i.e. school staff responsible for IEP, EL plans or Section 504 plans), district transportation director, others as deemed appropriate. The Multi-Disciplinary Team (MDT) is a requirement codified in WV Code §49-4-405 for cases of abuse and neglect and §49-4-406 for youthful offenders. The MDT is required to meet quarterly on all cases in which a youth resides in foster care and will be responsible for reviewing the current status of the family's situation and making best interest recommendation to the court.

Process: The LEA should establish a mechanism through which relevant parties can meaningfully participate in the Best Interest Determination process. For foster children, the process should be integrated with the Multi-Disciplinary Team (MDT) process as time allows. For homeless children, the process should be established within the school district and be initiated as soon as possible after a homeless child identification is made.

Both the McKinney-Vento Act (for homeless children) and the Every Student Succeeds Act (for foster children) view the School of Origin as the default option to promote educational stability. Families may request the School of Origin or the School of Residence (where the child is living at the time) as their preferred school placement. It is the responsibility of the LEA and relevant collaborators to determine which school placement is in the child's best interest. The LEA must document the Best Interest Determination decision making process and may use the example form found in Appendix A to do so.

Upon completion of the determination process the LEA shall provide the child's guardian/custodian with the written Notice of Best Interest Determination clearly stating the decided upon school placement and rationale for the decision. The LEA may use the example form found in Appendix B.

Dispute Resolution: If any of the relevant collaborators do not agree on the appropriate placement, the LEA must facilitate an enrollment dispute resolution procedure. The requirements for the dispute procedure differ respectively for homeless children and foster care children.

BID Dispute Process Homeless Children:

- Because the initial BID process involves school and district-level decision makers, it is anticipated that the negotiated decision should be agreed upon by all parties. However, if it is impossible to reach agreement, any disputing party may appeal the decision to the WVDE McKinney-Vento Coordinator.
- A homeless student should be enrolled in the school the family has chosen during the resolution process.

- Upon receiving a dispute notification (Appendix C), the WVDE McKinney-Vento Coordinator shall request and review all determination documents from the LEA, conduct interviews as needed, and issue a recommendation to the State Superintendent. A written decision shall be provided by the state superintendent's office within 10 business days of receiving the dispute notification.
- The WVDE McKinney-Vento Coordinator will follow up with the school/county 15 business days after the final determination is issued to verify the child's enrollment status.

BID Dispute Process for Foster Children:

- The Every Student Succeeds Act does not stipulate the specific requirements for the dispute resolution process, but each agency is required to have a process. The child welfare agency's Community Services Manager (CSM) or designee will work with the LEA foster care point-of-contact to resolve any disputes.
- ESSA requires that the child welfare agency has the final decision-making authority in regards to Best Interest Determination (in the absence of state law or court order). Because the child welfare agency is included among the relevant collaborators in the determination process, it is anticipated that any dispute would be addressed and resolved within the determination process.
- In the event that the child welfare agency needs additional time to make a BID decision, a foster child (to the extent feasible and appropriate) should remain in his or her School of Origin during the resolution process.
- Additionally, the CSM or designee will work with the assigned social worker within the child welfare department to ensure the compliance of all policies, procedures, and legislation related to the stability of education for the child in question. The CSM or designee will work with the LEA foster care point of contact to identify barriers and determine appropriate means of removing such barriers. The CSM or designee may contact the WVDHHR Foster Care Point of Contact for ESSA, designated as the Deputy Commissioner of Program and Resource Development, for guidance and assistance or when disputes cannot be resolved at the local level.
- A formal resolution shall be provided by the Deputy Commissioner of Program and Resource Development within 10 business days of receiving the dispute notification.

2. *Transportation to School of Origin:*

If the Best Interest Determination is that the student should remain in the School of Origin, the LEA and relevant collaborators shall develop a transportation plan that outlines how this service will be provided, arranged and funded. The LEA must develop written procedures that will include:

- a variety of transportation methods, which include but are not limited to, school bus routes, public transportation, in-lieu of payments, and private contracted services;

- appropriate funding sources for transporting homeless children, including but are not limited to, Title I (ESSA), McKinney-Vento (Homeless Education), and local funds;
- appropriate funding sources for transporting foster children, including but are not limited to, Title I (ESSA), Title IV-E (Social Security Act) and local funds; and
- a communication protocol for informing all relevant school system departments (transportation, finance, school administration, etc.) of the transportation plan and their role in implementing the plan.

An individual plan is required for each homeless/foster child requiring transportation services to their School of Origin. In addition, each LEA and child welfare agency must also develop broader procedures for how funding decisions will be determined and how transportation plans will be communicated and executed for foster children. These procedures should be reviewed and revised at least annually by all relevant parties involved in planning, funding and delivering transportation to School of Origin for foster children.

3. Immediate Enrollment:

Immediate enrollment means that a child's enrollment information is entered in the West Virginia Education Information System (WVEIS) immediately when a student presents themselves for enrollment at a new school/district; regardless of availability of enrollment documents. Upon enrollment, the LEA shall assess individual student needs and determine a reasonable amount of time necessary to make provisions for required educational programs/services. Attendance and participation in school activities shall be initiated within a reasonable amount of time; generally, a newly enrolled student should be participating in school activities within three school days.

If the Best Interest Determination is that the child enrolls in a new school, the School of Residence shall immediately enroll the homeless/foster child even if the child is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. This does not eliminate these enrollment requirements; it merely allows enrollment to proceed while records are secured.

The requirement for immunizations, will continue to follow the State Superintendent Interpretation of July 28, 2005 (Appendix D), which may result in a delay in the student participating in school, but may not delay enrollment. If they are newly enrolled in WV public schools, they are not entitled to the presumption that they've already been vaccinated.

In order to facilitate immediate enrollment processes, the LEA must ensure that the following enrollment procedures are followed in each of their schools:

- An enrolling school (i.e. School of Residence) shall immediately contact the last school attended by the enrolling child (i.e. School of Origin) to obtain relevant academic and other records.
- Any records kept by the School of Origin (including but not limited to immunization or medical records, academic records, birth certificates, guardianship records, and

evaluations for special services or programs) regarding a newly enrolled homeless/foster child shall be provided to the enrolling school so that the records are available, in a timely fashion. If transferring from one West Virginia public school to another West Virginia public school, the student's records should be made available upon request through the West Virginia Education Information System.

- If a child needs to obtain immunizations or medical records, the enrolling school shall immediately refer the child's parent or guardian to the LEA's liaison who provides assistance in obtaining necessary immunizations or medical records.
- If there are any questions or concerns related to processing immediate enrollment for foster care students, the LEA foster care point of contact shall contact the CSM or designee to clarify any information that is needed to facilitate the enrollment process.
- If enrollment documentation cannot be obtained, a sample affidavit for missing enrollment documentation is permissible. (Sample Affidavit for Missing Enrollment Documents - Appendix E)
- An unaccompanied youth is a homeless student who is not able to reside with his/her parent or guardian. The lack of a parent or guardian may not prevent the student from enrolling in school. In these situations, a representative of the LEA must complete a Caregiver's Authorization Affidavit to act on behalf of the child's custodian/guardian to facilitate all necessary school enrollment processes. (Sample Caregiver's Authorization Affidavit - Appendix F).

Inter-County Considerations:

Throughout the process of ensuring educational stability for homeless/foster children, special considerations may be applicable when Best Interest Determination, transportation and enrollment occur between more than one LEA. The following considerations should apply:

Inter-County Considerations for Homeless Students:

- If a homeless student begins living in an area served by another LEA, but wants to continue his or her education at the School of Origin, the LEA of origin and the LEA of residence must both be involved in the BID process.
- If the BID process places the child in his or her School of Origin, the LEA of origin and the LEA of residence must jointly develop the transportation plan including cost-sharing agreements.
- If the BID process places the child in a School of Residence, the LEA of origin and the LEA of residence must collaborate to ensure that immediate enrollment is facilitated as outlined in the Immediate Enrollment section of this guidance.
- If a dispute arises between the two counties related to enrollment of a homeless student in School of Residence or a School of Origin transportation plan, the disputing county may submit a written dispute form to the WVDE McKinney-Vento Coordinator for resolution following the same process outlined in the BID section of this guidance.

Inter-County Considerations for Foster Students:

- If a foster care student begins living in an area served by another LEA, but wants to continue his or her education at the School of Origin, the LEA of origin and the LEA of residence must both be involved in the BID process.
- If the BID process places the child in his or her School of Origin, the LEA of origin, the LEA of residence and the CSM or designee must jointly develop the transportation plan including cost-sharing agreements.
- If the BID process places the child in a School of Residence, the LEA of origin and the LEA of residence must collaborate to ensure that immediate enrollment is facilitated as outlined in the Immediate Enrollment section of this guidance.
- If a dispute arises between the two counties related to enrollment of a foster care student in School of Residence or a School of Origin transportation plan, the disputing county may submit a written request for mediation to the WVDE Foster Care Point of Contact for ESSA, designated as the Executive Director of Federal Programs.

Local Education Agency (LEA) Points of Contacts (POC)

The issues related to educational stability may require input and collaboration from a variety of LEA staff including but not limited to those with responsibilities for attendance, Title I (ESSA), transportation, finance, special education and support services; however, all LEAs must designate an appropriate staff person(s) to act as a point of contact (POC) respectively for matters involving homeless children and children in foster care. West Virginia State Code §18-8-4, designates the attendance director in each county as the local homeless education liaison. ESSA does not mandate which staff member must be the Foster Care POC at the LEA; but, given the similarity of responsibilities with the homeless education liaison, LEAs might consider consolidating these roles as appropriate based on the following role descriptions:

LEA Points of Contacts (POC) must ensure that:

- Homeless/Foster children and youths are identified by school personnel and through coordination activities with state and local entities and agencies;
- Collaboration occurs between state and local agencies responsible for the care and safety of homeless/foster children as educational decisions are made;
- Homeless/Foster children and youths maintain educational stability by coordinating services to remain in the child's School of Origin or by facilitating a seamless enrollment and transition to another school where enrollment is determined to be in the child's best interest;
- Homeless/Foster children have full and equal opportunity to succeed in school;
- Assistance is provided to homeless/foster children who do not have required enrollment documents (immunization or medical records) to obtain necessary immunizations and/or documents;

- Assistance is provided to unaccompanied homeless youth (acting as a parent/guardian surrogate) in placement or enrollment decisions, including considering the youth's wishes in those decisions and providing notice to the youth of the right to appeal such decisions under the enrollment dispute resolution process;
- Homeless/Foster children and youths receive educational services for which they are eligible, including Head Start programs; and preschool programs administered by the LEA; referrals to health care services; dental services; mental health services; and other appropriate services;
- The parents or guardians of homeless/foster children are informed of educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where children and youth receive services under the McKinney-Vento Act, such as schools, family shelters and food distribution centers;
- Enrollment disputes are mediated in accordance with the enrollment dispute resolution process outlined in this guidance; and
- The parents or guardian of a homeless/foster child are fully informed of the right to transportation services and are provided assistance in accessing transportation to school.

Local Child Welfare Agency Foster Care Points of Contact (POC):

The Every Student Succeeds Act requires child welfare agencies to designate a point of contact (POC) to collaborate with LEAs related to the stability of a foster child's education. The CSM or designee for each district will serve as the foster care POC to collaborate with the LEA.

Local Child Welfare POCs must ensure that:

- LEAs are notified when school-age children enter foster care;
- LEAs are notified of multi-disciplinary team (MDT) meetings that are scheduled for children in foster care;
- LEAs are provided contact information of the assigned social worker to any child or youth in question;
- Information related to child welfare policies and procedures involving children in foster care are provided to LEAs when requested;
- Coordination with the LEA occurs to resolve disputes involving Best Interest Determinations (BID) and recommendations involving the educational stability of children in foster care; and
- Coordination with the LEA occurs to develop a plan of transportation, when possible, if the School of Origin is determined to be in the best interest of the foster child and the child is placed outside of current school attendance area.

In addition to these requirements, the CSM or designee will also act as liaison between Child Welfare districts and the WVDHHR Foster Care POC for ESSA.

State Points of Contact (POC):

The WVDE McKinney-Vento Coordinator is the state education agency POC for issues related to educational stability for homeless children. The WVDE Executive Director of Federal Programs is the state education agency POC for issues related to educational stability for children in foster care. Both of these positions are located in the WVDE Office of Federal Programs <http://wvde.state.wv.us/federal-programs/> .

The WVDHHR Deputy Commissioner of Program and Resource Development is the state child welfare agency POC for issues related to educational stability for children in foster care. This position is located in the WVDHHR Bureau for Children and Families <http://www.dhhr.wv.gov/bcf/Pages/default.aspx> .

Appendices

Homeless/Foster Child Educational Stability
Best Interest Determination Process for School Placement (Appendix A)

This form is to be completed by the relevant collaborators in the Best Interest Determination Process for the indicated student.

Date:

Student Name:

Student School ID#:

School of Origin:

District:

Please provide the following information for the previous schools the child attended, listing the most recent school first.

Dates of Attendance:	School Name/County/State:	Living Arrangement at the Time of Enrollment:

1. Are the School of Origin and the current school of residency in the same or different public school districts?

2. *(Use this questions as appropriate based on the age of the student.)* What is the child's desire concerning the school of his/her best interest? What specific reasons does the student give for his/her preference?

3. What is the opinion of the parent or caregiver concerning the child's school of best interest?

4. What is the opinion of relevant court/child welfare agencies concerning the child's school of best interest?

5. What is the distance and time spent on travel from the current residence to the School of Origin? What is the potential impact of the commute on the child given their developmental age and any special needs?

6. If transportation is not currently available back to the School of Origin, how can it be arranged?

7. What time of year is it (near the end of the school year, the summer)?

8. What is the age of the child and how long did the child attend the School of Origin? Were meaningful social and educational relationships established?

9. Are there specified people in the School of Origin who have been providing support or assistance to the family or child?

10. What influence has the school or origin's school climate had on the child? Including any school safety issues? How might this be impacted by a change in schools?

11. List any special programs such as gifted, bilingual, or remedial education in which the child has been participating at the School of Origin? Are they available at the school of residency?

12. Based on the knowledge of the family situation, how long is it likely that the child will remain at the current residence?

13. What is the likelihood that the child will once again establish residency in the attendance area of the School of Origin?

14. What is the history of school transfers for the child and how have they impacted the child academically and emotionally?

Recommendation(s):

Participants in this determination of feasibility for school placement in the student's best interest:

Name	Signature	Title

Homeless/Foster Child Educational Stability
Notice of Best Interest Determination (Appendix B)

To be completed and attached to Forms A when the Best Interest Determination has been completed.

Date: _____

Person Completing Form: _____

Title: _____

LEA: _____

Parent or Guardian: _____

Student(s): _____

A Best Interest Determination committee was convened on _____.
After reviewing all of the information in the ***Homeless/Foster Child Educational Stability Best Interest Determination Process for School Placement (Form A)*** related to the educational placement of aforementioned student(s), the most appropriate educational placement is as follows:

- School of Origin
- New Enrollment School: _____

The following plan has been developed for provision of transportation to School of Origin/enrollment in new school:

You have the right to appeal this decision by completing Form C.

Homeless/Foster Child Educational Stability
Information for Enrollment Dispute Resolution (Appendix C)

Student(s): _____

Person Completing Form: _____

Relation to Student(s): _____

Contact Information: (phone/email) _____

County School District: _____

School Enrollment Preference: _____

Please provide a written explanation to support your appeal in the space provided:

Please complete this form and attach copies of:

- ***Homeless/Foster Child Educational Stability Best Interest Determination Process for School Placement (Form A)*** and
- ***Homeless/Foster Child Educational Stability Notice of Best Interest Determination (Form B)***

Submit all forms to: **West Virginia Department of Education**
Office of Federal Programs
1900 Kanawha Blvd., East
Bldg. 6, Room 330
Charleston, WV 25305-0330
Phone: (304) 558-7805

(Appendix E)



James B. Phares, Ed.D. State Superintendent of Schools
1900 Kanawha Boulevard East Building 6
Charleston, WV 25305

<http://wvde.state.wv.us>

MEMORANDUM

TO: County Superintendents
FROM: James B. Phares, Ed.D. 
DATE: May 22, 2014
RE: Birth Certificate Requirement for Enrollment

Several questions have been brought to my attention concerning the operation of West Virginia Code § 18-2-5c, which requires a person enrolling a student to present a certified copy of the student's birth certificate or to execute an affidavit explaining the absence of the birth certificate in order to enroll the child in public school:

1. Does a birth certificate issued by another state or country need to be certified by the West Virginia registrar of vital statistics? If not, will a certified birth certificate from another state or country satisfy the requirements of W. Va. Code § 18-2-5c?
2. If the person enrolling the student does not present a certified birth certificate, should he/she be allowed an amount of time in which to produce the birth certificate following the student's enrollment or should the person be required to execute an affidavit as a condition of enrollment?
3. What information should the affidavit contain? Should the person submit documents in addition to the affidavit?
4. What law enforcement agency should receive notice that a student has been enrolled with an affidavit in lieu of a certified copy of the birth record?
5. Should the failure and/or refusal of the person to produce a certified birth certificate or complete an affidavit prevent a child from being enrolled in school?
6. Does the operation of this statute have the effect of discouraging those for whom English is a second language or who may be illegal immigrants from enrolling their children?

I will answer each question in turn after first providing background on this statutory requirement.

W. Va. Code § 18-2-5c is titled, **“Birth certificate is required upon admission to public school; required notice to local law-enforcement agency of missing children.”** It mandates that no student be admitted for the first time to any public school unless the person enrolling the student presents a certified copy of his or her original birth record certified by the state registrar of vital statistics confirming identity, age and state file number of the original birth record. If a certified copy of a student’s birth record cannot be obtained, the person enrolling the student must submit an affidavit explaining the inability to produce a certified copy of the birth record. If an affidavit is submitted in lieu of a birth record, the school principal must immediately notify the local law enforcement agency and include copies of the affidavit and proof of the student’s identity and age that was provided the school. Principals are statutorily immune from civil or criminal liability for reporting to local law enforcement agencies or for failing to report.

The statute’s primary purpose is to help locate missing children; it operates in conjunction with West Virginia Code § 16-5-12, which is part of the statute creating the State Registrar of Vital Statistics. When the State Registrar receives a missing child report from a law enforcement agency, the child’s missing status is noted on his or her birth certificate. Upon receiving a request for a missing child’s birth certificate, the State Registrar immediately notifies the

law enforcement agency issuing the missing child report of the request and any information it has about the requester. If a parent or guardian does not provide a birth certificate, bypassing this safeguard, § 18-2-5c requires the school principal to "immediately" report the use of an affidavit to a local law enforcement agency.

The birth certificate requirement also helps ensure that children enrolling for the first time are placed in the appropriate grade.

1. *Does a birth certificate issued by another state or country need to be certified by the West Virginia registrar of vital statistics? If not, will a certified birth certificate that originates from another state or country meet the requirements of W. Va. Code § 18-2-5c?*

A birth certificate issued outside of West Virginia cannot be certified by the West Virginia Registrar, with only a few statutory exceptions. A birth certificate certified by a public authority from another state, a territory or possession of the United States is sufficient.

West Virginia's "State Registrar of Vital Statistics" and its local offices only issue birth certificates for children born in West Virginia, infants of unknown parentage if the person assuming custody lives in West Virginia and children born in another country who are adopted by West Virginians. There is no mechanism for West Virginia to issue a birth certificate for children born out of state who have moved to West Virginia.

The statute's goal of locating missing children would not be served if it applied only to those able to provide birth certificates certified by the West Virginia Registrar of Vital Statistics. Missing children may be taken from their

state of residence and brought to West Virginia. On the other hand, a West Virginia public school's refusal to accept a birth certificate certified by a clerk in another state, territory or U.S. possession would violate a federal statute requiring nonjudicial records like a birth certificate to be given full faith and credit by every court and office within the United States. 28 USC § 1739. A brief internet search demonstrates that all states have a registry that provides certified copies of a birth certificate. Most states also have a system whereby the request for a birth certificate of a child whose name is on a missing children's registry triggers a report to law enforcement.

W. Va. Code § 18-2-5c also applies to the enrollment of students who were born outside the United States, its territories or possessions. These include U.S. citizens born outside the United States who have a federally issued Consular Report of Birth Abroad. They may be naturalized citizens, resident aliens or undocumented immigrants.

Application of this statute to such students furthers the State's interest in locating missing children because the United States assists in the return of children who have been abducted to or wrongfully retained in this country.¹

When the enrolling student has a birth certificate certified from a foreign country, should W. Va. Code § 18-2-5c allow a school to accept the certificate

¹The U. S., along with 90 other countries, is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. It has enacted the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11610 and the International Parental Kidnaping Crime Act, 18 U.S.C. § 1204. The National Clearinghouse for Missing and Exploited Children acts on behalf of the Central Authority for the United States to assist those whose children have been abducted from other Hague Convention countries.

those specified in the statute, because it would delay the immediate reporting of the lack of a certified birth certificate to local law enforcement.

The lack of a grace period for those individuals who do not have a certified copy of their child's birth certificate does not prevent the child from enrolling. The statute anticipates there will be situations in which a certified copy of a student's birth certificate may be unavailable and permits the person enrolling the student to submit an affidavit. The affidavit is then submitted to a local law enforcement agency to determine whether the student has been reported to be missing.

3. *What information should the affidavit contain? Should the person submit documents in addition to the affidavit?*

Attached to this memorandum is a form affidavit that county school systems may use to facilitate the process. The statute states that a school notifying local law enforcement should provide the "submitted proof" of the student's identity and age along with the affidavit explaining the inability to produce a certified birth certificate. To assist law enforcement in determining if the child has been abducted, it is appropriate to request some type of documentation be produced to establish a student's identity and age, such as a passport or social security card. Alternatively, a religious record, doctor, clinic or hospital record, daycare center or school record, preferably certified by the issuing agency, would also be helpful. Even an uncertified copy of a birth certificate would be useful.

The affidavit form may not request information concerning citizenship or immigration status of the child or parents, because undocumented school-aged children cannot be denied a free public education offered to other children unless the denial furthers some substantial state interest under the Equal Protection Clause. *Plyler v. Doe*, 457 U.S. 202 (1982). The form may properly ask for the student's place of birth, whatever the location, for the purpose of identifying children who have been reported missing.

4. *What law enforcement agency should receive notice that a student has been enrolled without a certified copy of the birth record?*

The statute directs schools to give notice to the "local" law enforcement agency. If the school in question is located in a municipality, the city police would receive the notice. In unincorporated areas, the county sheriff's office would receive the notice. The state police would not be considered local law enforcement, as made evident by a related statutory section in Chapter 49 of the West Virginia Code.²

Disclosure of this information is permissible without parental consent under the Family Education Rights and Privacy Act, 20 U.S.C. 1232g(b)(1)(E)(ii), which permits disclosure to local authorities pursuant to a State statute concerning the juvenile justice system. However, the local law enforcement agencies receiving this information may not disclose to another agency for any

² The Legislature, in 1993, created the West Virginia Missing Children Information Clearinghouse, which is administered by the State Police. In W. Va. Code § 49-916(a), the Legislature directed a study to be made on ways to improve the effectiveness of the Clearinghouse. Among other possible changes, the Legislature suggested that county boards of education be required to notify the Clearinghouse, i.e., the State Police, in addition to the local law enforcement agencies if an affidavit is submitted

purpose other than one which will assist in determining if the student is an abducted or missing child.

5. *Should the failure and/or refusal of the individual to produce a child's certified birth certificate or complete an affidavit prevent the child from being enrolled in school?*

No. The circumstances under which a student may be denied the right to enroll in a public school are limited. The Supreme Court has held that lack of academic records or proof of guardianship is not grounds to refuse admittance. *White v. Linkinoggor*, 176 W. Va. 410, 344 S.E.2d 633 (1986). Only a parent's outright refusal to immunize his or her child justifies a county school system excluding the student from enrollment, due to the health risks to other students and staff. *Workman v. Mingo County Bd. of Education*, 419 Fed. Appx. 348 (4th Cir. 2011).

By contrast, a student's enrollment without a birth certificate or even an affidavit poses no health or safety risk to the students or staff. If the accompanying adult refuses to complete an affidavit or submit any documentation as to age or proof of identity, the school should promptly enroll the student and make a report to the local law enforcement agency as it would if an affidavit had been submitted.

6. *Does the operation of this statute have the effect of discouraging those for whom English is a second language and who may be illegal immigrants from enrolling their children?*

The State has a substantial interest in locating missing or abducted children. All students residing in West Virginia have a constitutional right to a

thorough and efficient education, regardless of national origin or immigration status. The statute's requirement that the individual enrolling a student complete an affidavit form in lieu of providing a certified birth certificate balances these two interests. Still, we as educators must be sensitive to the possibility that parents for whom English is a second language or who may be illegal immigrants will be discouraged from enrolling their children by the specter of completing an affidavit and having it turned over to local law enforcement authorities.

To allay these concerns, the county's attendance director should be available to help explain the purpose of the birth certificate requirement and the process for completing the affidavit to persons who are confused by the process. The attendance director may assist in finding a notary public to notarize the affidavit if there is no notary at the school. The affidavit form should contain language for law enforcement agencies specifying the purpose of the school's report.

TO LOCAL LAW ENFORCEMENT AGENCY: THIS AFFIDAVIT AND ANY ACCOMPANYING DOCUMENTATION IS BEING SUBMITTED PURSUANT TO W. Va. CODE § 18-2-5c SOLELY TO DETERMINE WHETHER THE NAMED STUDENT HAS BEEN REPORTED AS A MISSING OR ABDUCTED CHILD. THIS INFORMATION WILL NOT BE DISCLOSED TO ANY OTHER PARTY EXCEPT AS PROVIDED UNDER STATE LAW WITHOUT THE PRIOR WRITTEN CONSENT OF THE PARENT OR GUARDIAN OF THE STUDENT.

AFFIDAVIT IN LIEU OF BIRTH CERTIFICATE

I, _____, am the _____ [relationship to student]
to [full name of student] _____, who is being enrolled in _____

County Schools without having furnished a certified copy of the student's birth record.

I would like the school to use the following, accurate information:

1. Name of student as listed on birth certificate, if any:

2. Date of Birth _____ Current Age: _____ Sex: M or F
3. Student's Social Security Number, if any: _____
4. Place of Birth: City: _____ State or Province:
_____ Country if not U.S. _____
5. Race: _____; Height: _____; Weight: _____ Eye
Color: _____; Hair Color: _____
6. Name of mother on birth record: _____
7. Name of father on birth record: _____
8. Explanation of inability to produce a certified copy of birth record [attach extra pages if necessary]:

9. I have provided the following documents as proof of identity or age of student:

a. _____

b. _____

c. _____

By signing below, I attest to the above information as being both accurate and truthful.

Signature:

State of West Virginia

County of _____:

I, _____, a Notary Public in the State of West Virginia, do certify that _____, whose name is signed to the writing above, has signed and acknowledged the same before me this _____ day of _____, 20_____.

My commission expires:

Notary Public

SEAL

Sample Affidavit for Missing Enrollment Documentation (Appendix E)

This sample may be used to develop a state or local affidavit to facilitate the enrollment of students who are experiencing homelessness. It is recommended that the attorney for the local education agency using an adaptation of this document be consulted.

State: _____ County: _____

I, _____, being first duly sworn upon oath or affirmation, based upon my personal knowledge, answer the following questions as noted in my handwriting on this and the attached pages, which are propounded by duly authorized officials of the _____ County School System concerning missing enrollment documentation of _____.
Student's Full Legal Name

Missing enrollment documentation includes:

- Proof of Residency
- Proof of Identity
- Immunization Record/ School Physical/Health Record
- School Record

In accordance with the requirements of the *McKinney-Vento Homeless Education Assistance Improvements Act of 2001*, (P. L. 107-110) and the *Elementary and Secondary Education Act (ESEA)*, please complete the following in order to address state and local barriers to enrollment for students meeting the definition of homelessness or children in foster care.

Please initial each statement:

- I have been advised by an official of the county/school, and do understand that I am required to answer the questions contained in this Affidavit as a condition to the enrollment and admission of a pupil into the county/school because of an inability to supply the county/school with the necessary enrollment documentation checked earlier on this Affidavit. _____

- I understand that giving a false or otherwise untrue answer to any of the questions in this Affidavit could result in a criminal charge of false swearing being brought against me.

- I understand that when a question in the Affidavit asks if I have knowledge of or if I know of an instance or situation, it means that I am expected to relate any knowledge I may have about the incident, whether it be personal knowledge or information received from other people, and to relate the source of my knowledge and information. _____
- I understand that for missing immunization or health records that I will still need to take the student to get the necessary medical documentation and/or immunizations and documentation and provide a copy of that documentation to the school within a specified time period. _____

Please answer the following questions to the best of your knowledge:

1. What is the student's date of birth? _____
2. What is the student's place of birth (county and state)? _____
3. Who are the parents, parents by legal adoption, legal guardians, or persons having legal custody of the student? _____
4. Where is the student currently residing? _____
5. Do you have legal custody imposed by a court order or have you been designated a court appointed guardian for the student? _____
6. What court entered such order and what type of case was it (i.e., custody hearing, etc.)?

7. Why are you unable to present a copy of documentation for the items checked on page 1?

8. To the best of your knowledge has this pupil ever been reported to any law enforcement agency as a missing child? _____ If yes, identify the name/address of the law enforcement agency receiving the report: _____

Date of report: _____

9. If this Affidavit being used to enroll a pupil who is missing school records, what was the name and location of the last school the student attended? _____

AFFIANT Signature

Date

NOTARY Signature

Subscribed and sworn before me this ____ day of _____, _____

My commission expires: _____

Sample Caregiver Authorization (Appendix F)

This form is intended to address the McKinney-Vento Homeless Assistance Act (P. L. 107-110) requirement that homeless children have access to education and other services for which they are eligible. The McKinney-Vento Homeless Assistance Act states specifically that barriers to enrollment must be removed. In some cases, a child or youth who is homeless may not be able to reside with his/her parent or guardian; however, this fact does not nullify the child's/youth's right to receive a free, appropriate public education.

Instructions:

Complete this form for a child/youth presenting himself/herself for enrollment while not in the physical custody of a parent or guardian.

- To authorize the enrollment in school of a minor, complete items 1 through 4 and sign the form.
- To authorize the enrollment and school-related medical care of a minor, complete all items and sign the form.

I am 18 years of age or older and have agreed to fulfill the role of caregiver for the minor named below.

1. Name of Minor: _____

2. Minor's Date of Birth: _____

3. My Name (adult giving authorization): _____

4. My Home Address: _____

5. Check one or both (for example, if one parent was advised and the other could not be located):

_____ I have advised the parent(s) or other person(s) having legal custody of the minor as to my intent to authorize medical care and have received no objection.

_____ I am unable to contact the parent(s) or legal guardian(s) at this time to notify them of my intended authorization.

6. My Date of Birth: _____

7. My State Driver's License or Identification Card Number: _____

I declare under penalty of perjury under the laws of this state that the foregoing information is true and correct.

Signature: _____ Date: _____