

## **MIC 3 LEGAL PURPOSE & EFFECT – FREQUENTLY ASKED QUESTIONS**

In an effort to separate myth from reality the Interstate Commission on Educational Opportunity for Military Children appreciates the opportunity to be able to respond to some concerns occasionally raised by those who are only recently acquainted with the Interstate Compact on Educational Opportunity for Military Children or who have formed viewpoints based upon an incomplete understanding of the legal purpose and effect of the Compact. Toward that end, the following represents responses to concerns that have been raised during the consideration of all 50 member states and the District of Columbia which have enacted the Compact.

**Concern 1:** *“Doesn't the Compact usurp state authority for an Interstate Compact and create an expensive bureaucratic structure. Doesn't it take authority from local school boards and school administrators and divest it in a multi-state compact?”*

**Response:** While ‘state sovereignty’ concerns are sometimes raised as an objection to an interstate compact, in reality a compact usually serves to promote state sovereignty in that interstate compacts, unlike pre-emptive congressional legislation or regulations, allow states to continue to exercise authority over interstate issues without the need for federal intervention or pre-emption. When examined from that perspective, by enacting an interstate compact the State is only giving up the right to act “unilaterally” with regard to an interstate problem which cannot be resolved without a uniform solution agreed to by all the states involved. No state can assure that the educational needs of children of military members will be met by another state to which they are transferred without an enforceable, uniform standard which under our federal Constitution can only be established through either Congressional action (See U.S. Constitution, Article I, Section 8) or an interstate compact (See U.S. Constitution, Article I, Section 10, Clause 3).

Consistent with this point of view, development began on the Interstate Compact on Educational Opportunity for Military Children (hereafter referred to as the Compact) to help solve issues for transitioning military school children. The Office of the Deputy Under Secretary of Defense (Military Community & Family Policy), working in conjunction with the Council of State Governments (CSG), began planning for the creation of the Compact in 2006. Over 18 key stakeholders, including representation from National Association of Elementary School Principals, National Military Family Association, Military Child Education Coalition (MCEC), U.S. Department of Education, National School Boards Association, National PTA, National Association of State Boards of Education, Office of the Lt. Governor from North Carolina, Alabama State Senate, Christian County Schools, National Education Association, Military Impacted Schools Association, Maryland Department of Education, California Department of Education and the Education Commission of the States, worked for two years to develop the Interstate Compact. Legal experts, specifically those with both extensive substantive knowledge and experience in drafting interstate compacts, as well as experts in primary and secondary education issues, worked together in conjunction with the stakeholders mentioned to draft the proposed compact language and legal analysis for the Compact over the same period of time.

The purpose of the Compact is to establish a uniform means of assisting transitioning children of military families transferred from one state to another. Member states enter the Compact

voluntarily upon enactment of the Compact statute and have an equal say in any decisions made. Any rule promulgated by the Commission must be agreed upon by a majority of member states, and a majority of the state legislatures may veto any proposed rule. Rules must remain within the specific authorizing framework of the Compact. Moreover, any member state may file a legal challenge to a rule to invalidate it. Any subsequent amendment to the compact itself must be agreed upon unanimously by the member states and unanimously approved by the state legislatures. Any member state is free to withdraw from the compact at any time upon repeal of the legislation by which it joined the Compact.

The Compact does not “divest” local school boards and school administrators of their authority. A closer examination of the text of the Compact, as has been conducted by all 50 member states and the District of Columbia which have enacted it, will reveal that the Compact provisions have been broadly drafted with the intent to avoid conflict with existing state education codes as far as possible. The Compact language in the four (4) substantive areas in which uniformity is sought (enrollment, placement, eligibility, and graduation) does not seek to abrogate state control over education policy or procedure, but only to impose a duty of reasonable accommodation of the unique needs of children of military members in these four (4) areas.

**Concern 2:** *“Can't these issues be basically addressed through a more family oriented human resources policy by the Department of Defense (DoD)?”*

**Response:** The Under Secretary of Defense has made this issue one of his "10 Key Issues" because school transition problems are wide spread. However, the solution to the problems faced by transitioning military children does not lie within purview of DoD policy since education is primarily a state and local community issue. For the DoD to unilaterally achieve these goals without working with the states would require the U.S. Congress to impose uniformity through federally mandated legislation which, as has been previously emphasized, would result in federal pre-emption of state authority by the federal government.

In order to support military families, the DoD contracted with the Council of State Governments, “CSG,” a non-profit association of the states which was created to promote the role of the states in our federal system, to give assistance in the development of the Compact in order to provide states more consistency in addressing transition issues facing military children. The Compact provides states the opportunity to collectively exercise their sovereignty to assist families who have already sacrificed so much for their country.

**Concern 3:** *Is transfer of student records really that big of a problem? Won't that cost schools money?*

**Response:** The problem is that there are currently no agreed upon standards relating to the transfer of school records. Military children are often placed in the wrong courses because some schools refuse to accept hand-carried copies until the official records arrive. A time lapse between the entry into school and the arrival of official school records (sometimes as long as 4 months!) can result in the military child being placed inappropriately in critical areas from special education to gifted programs.

Providing parents with a few pages of hand-carried records such as class schedules and grades, and ensuring the official records are sent within the Compact standard of 10 days, will facilitate the appropriate and timely placement of the child in the new school. The records will be sent whether there is a Compact or not. Asking that they be sent in a timely fashion should not represent any significant cost factor.

**Concern 4:** *“We have great educational quality in our state, and our exams help to make sure this continues. We're proud of the progress we have made. Won't the Compact authorize an automatic waiver with no possibility for interviews with the student and involved parents?”*

**Response:** The Compact does not require a state to waive any of its state standards or exit exams.

The Compact provisions specifically provide for flexibility and local discretion in course and program placement and on-time graduation within the criteria established by the state.

Regarding course placement, Article V of the Compact states “[w]hen the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student’s enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered.” Certainly, school districts will want to discuss appropriate placement with students and parents and the Compact in no way discourages that. After initial placement the Compact states “[t]his does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student” (emphasis supplied) (Art. V, §A, lines 14-16, model compact statute).

**Concern 5:** *“Will the placement of students with non-custodial parent or in loco parentis create costs for local districts?”*

**Response:** The deployment of a single or “dual” parent military family has often had an adverse impact on their children. The Compact seeks to lessen that impact by allowing the child to continue to attend their previous school even if the non-custodial parent (or other person standing *in loco parentis*) is living outside the jurisdiction of that school. This accommodation will provide the child some stability in an unstable time. The Compact also allows children to attend school tuition free during their parent’s deployment if the non-custodial parent (or other person standing *in loco parentis*) lives outside the jurisdiction of the custodial parent. This accommodation makes it possible for the non-custodial parent to provide care during deployment without encountering undue financial hardship. Schools should incur little if any additional costs as the child will be legitimately enrolled and the district will receive funding for the child from the state as they would for any other child enrolled in their school.

**Concern 6:** *“Aren't we forced to give additional excused absences under the Compact?”*

**Response:** No. Article V, §E. (Placement & Attendance) of the Compact provides that a student be granted additional excused *absences* “at the discretion of the local education agency superintendent.” (emphasis added). These absences are not mandated, under this provision for

students whose parents are leaving for, on leave from, or returning from a deployment to a combat position; but it makes clear that local officials are authorized to grant such additional absences. Local officials who served on the Advisory Group during the Compact's development encouraged such authorization, stating that they often want to grant absences, etc, but felt they at times lacked the authority to do so.

**Concern 7:** *"Is the fiscal estimate a realistic one? Can we expect hidden costs to administer the Compact?"*

**Response:** The estimate provided in the Legislative Resource Kit, published by CSG's National Center for Interstate Compacts, was established by the Council of State Governments based on budgets from other Interstate Compacts of similar size and responsibility to the Interstate Compact on Educational Opportunity for Military Children. This 'good faith' estimate of the potential cost to the compact states of \$1.00/child of an active duty military member amounted to a total budget based on 50 states membership of approximately \$630,000.00 Subsequently, the newly created Interstate Commission for Educational Opportunity for Military Children at its first meeting in October 2008 voted to adopt this estimate as the 'approved formula' to fund the Compact Commission by charging each member state \$1 per active duty, school-age, military child in the state. Any expenditures of the Commission may not exceed the amount collected from the member states. The budget will be adjusted as new states join the Compact Commission. The only change to this funding formula was a minimum dues requirement that was fixed at \$2,000.00 since there are seven (7) states that have less than 1,000 eligible students of military families.

During a study authorized by the State of California, representatives of local school districts with heavy military populations stated that they did not believe there would be any additional costs to their districts as related to the procedures anticipated by the Compact. In fact, they indicated that some cost savings may be realized due to streamlined, uniform standards between states/school districts, requiring less individualized staff inquiry, phone calls, and correspondence.

**Concern 8:** *We understand that as an interstate compact the statutory language cannot be amended at all. Is this true!*

**Response:** In a word, No! While it is correct that, in general, because an interstate compact is not only statutory but also is a binding contract between the member states, that it should not be materially altered; the states which have joined the Compact, including several states which created special commissions to review and analyze the impact of the Compact on other state education statutes (CA, WA, and MD for example), have not found significant conflicts that could not be overcome. Moreover there is a specific exception to this general principle that is provided in Article XVIII, § B of the compact for any provision which conflicts with the State Constitution, in which case the compact provision would be ineffective. In addition it should be kept in mind that all states enter into the Compact voluntarily, all rules are jointly made, can be vetoed by a majority of the state legislatures and can be legally challenged in court. Finally, if a state decides that it can no longer abide by the compact provisions, it is free to withdraw from the compact at any time by repeal of the statute which enacted the Compact.

**Concern 9:** *Article IV §A of the Compact requires the sending state to furnish a set of unofficial records to the parent. Who pays for this?"*

**Response:** Some school districts may require the parent to pay for extensive record duplication; however, there is no mandate that the entire official record has to be copied. Copies of the student's current schedule, grades, and possibly some supporting documents for special program placement are usually sufficient for the receiving school district to initially enroll the student.

**Concern 10:** *Article VII of the Compact provides "that local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial." (emphasis supplied). Isn't this just a student/parent to school administrative problem that just needs to be worked out to the benefit of the student?"*

**Response:** The MCEC Secondary Education Transition Study reported that twenty-five percent of military children report losing course credit because of transfers. Despite working with school officials, military parents are not always able to resolve issues that allow on-time graduation. A waiver for similar completed coursework should be given but when it is not possible to waive a required course or exit exam, the school district is asked to work with the sending school district where a student has met graduation requirements to ensure on-time graduation. The Compact does not require a state to waive any of its requirements but encourages as much flexibility as possible when making course credit decisions.

**Concern 11:** *"Aren't there concerns with the costs of forming the Interstate Compact Commission, specifically in hiring an Executive Director, enforcement and the annual assessment?"*

**Response:** As stated earlier, the estimate ~\$630,000 for operating the Interstate Commission when the Compact is fully operational in all 50 states was developed by the Council of State Governments based on budgets from other Interstate Compacts of similar size and responsibility to the Interstate Compact on Educational Opportunity for Military Children. As previously pointed out, this assessment, based upon the \$1.00/student "formula" has now been approved by the Interstate Commission as the official means by which dues assessments will be made subject to the \$2,000.00 minimum threshold. With respect to enforcement, the compact provides the necessary authority to resolve disputes and enforce the compact through a variety of means which include technical assistance and training, alternative dispute resolution such as mediation or arbitration and in the rare case, based on experience with other interstate agreements, through judicial enforcement which must be authorized by a majority vote of the entire commission, and which would consist primarily of seeking court enforcement of the compact provisions as would be the case with any other contractual agreement.

With respect to the fiscal impact of the annual assessment on a particular state to cover the overhead and administrative costs of the interstate compact (including the meetings of the Interstate Commission members as well as any staff members hired, such as an Executive Director), based on the approved formula previously described, the estimated cost to the State should primarily be related to the dues assessed each year based on the above formula. In light of

the total size of the state budget, the costs are extremely low to the State. This cost should also be considered in the context of the positive economic impact that the military has upon the State economy. Department of Defense data shows that Department spending in all member states substantially exceeds the modest annual dues payment, in payroll dollars alone. State specific data showing DoD spending in each member state is available from the DoD and can be obtained from the Commission.

Regarding the establishment of a State Council, most of the current member states of the Interstate Compact are not asking for any state funds in excess of the \$1 per school-age child of active duty military to pay the Commission dues. For those that are, the estimates run from between \$5000 and \$15,000 primarily to provide for travel and other expenses associated with the State Council meetings. It is not expected that State responsibilities will require any new state-level positions and no state is planning on hiring an Executive Director or full time Commissioner.

**Concern 12:** *"Why are the members of the Commission immune from legal action?"*

**Response:** The language concerning the interstate commission being classified as an instrumentality of the states is for the purpose of clearly defining the compact commission and those who administer the activities of the compact as a state agency exercising state power, consistent with a number of U.S. Supreme Court decisions which allow states to invoke Eleventh Amendment immunity for administrative agencies, including interstate compact commissions, as long as there exists "good reason to believe that the States structured the new agency to enable it to enjoy the special constitutional protection of the States themselves." See *Edelman v. Jordan*, 415 U.S. 651 (1974); and *Ford Motor Co. v. Dep't of Treasury of Ind.*, 323 U.S. 459 (1945); see also *Lake Country Estates v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401 (1979).

Moreover, Article XI, Section D.1. also clarifies that any liability of the employees or agents of the interstate commission within each state *"may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents."* In other words, state officials administering the provisions of the compact in the State will have the same immunity from liability available to any other employee of the State.

**Concern 13:** *"Is the data collection expensive and intrusive?"*

**Response:** The text of the compact does not contain an affirmative requirement for a state wide data collection system which would collect or disseminate data which is not already being collected and exchanged concerning children of parents who are deployed as members of the U.S. military. The compact merely requires that any data collected concerning these students be 'uniform' and "shared between and among member states, schools and military families under this compact." (See Article I, § F.) In addition, it should be recognized that these students will continue to transfer from state to state whether or not the Compact is enacted by all states and the information required to allow these students to enroll in a local education agency will continue to be collected and exchanged with or without the Compact. The purpose of the above-cited provision of the compact is simply to propose that this information be collected and disseminated

in a uniform manner by each state rather than on an *ad hoc* basis when a particular student affiliated with the military transfers.

**Concern 14:** *"Why are insurance and bonds being purchased and why are there provisions for acceptance of donations and grant money?"*

**Response:** The language of the Compact in regards to insurance, bonds, and grants is standard Compact language common to many interstate compact agreements. Attorneys and other document drafters sometimes refer to such language as 'boilerplate.' It simply acknowledges that as a governmental agency the compact commission will be tax exempt and is not prohibited from accepting donations or grants. All member states currently are members of, on average, two dozen Interstate Compacts, many of which have similar language, including for example, The Interstate Compact for Adult Offender Supervision of which all fifty (50) states are members.

**Concern 15:** *"Why doesn't the DoD pay for the Compact?"*

**Response:** The DoD provided funds to develop and help launch the Compact. However, from the outset of this effort the goal, which the Commission has quickly achieved, was for the Compact to not be a Federal Mandate and to be completely under the control of the member states. If the DoD were to have continued to pay for the Compact, it is more likely that a certain degree of both control and accountability would have been the inevitable result, which would have created a disproportionate federal influence over the Interstate Commission charged with administering the Compact. "Federalizing" this function would have led to the very type of interference into this state-sanctioned activity that the compact seeks to avoid.

**Concern 16:** *"Is the DoD data which provides the number of school age dependents of military families credible?"*

**Response:** The Defense Manpower Data Center collects many forms of data for DoD. The Interstate Compact Commission, at their first meeting in October 2008, decided to use the DMDC data as a consistent source of determining state fiscal obligations for the Compact. Each year, the June data generated by DMDC for school age, active duty children and will be used to determine the fiscal obligation for the next year. Other than potential BRAC adjustments, these figures remain substantially constant from year to year.

**Concern 17:** *"We consider our state a 'transfer friendly state and we already do most/all of the things covered by the Compact. We make every effort, every reasonable effort, to accommodate military families. In areas where there are many students from military families, the schools know how to help them. Why do we need the Compact?"*

**Response:** Notwithstanding each State's laudable efforts to accommodate children of military families who transfer into its public schools, without the compact, those accommodations end at the state border and a state which is not a member of the compact has any reliable means of imposing its requirements for accommodation on school districts in another state to which children of military families are transferred once they leave the State.

Additionally, under the compact 'sending states' are operating under uniform guidelines and there are now substantially fewer 'transferring children' who must be handled in a 'case-by-case' manner, thus saving time, money and duplicative efforts. Without the Compact, schools have to rely on an *ad hoc* process to assist students through the transfer process without any assurance the other state school system will send the required records or take other actions to accommodate the transferring students. With the Compact in place, this problem can be avoided. The agreed upon actions (e.g., records transfer, placement, enrollment etc.) should happen in a timely manner; and with uniform standards in place, decisions will be rendered with more consistent outcomes over time and your State will be better able to protect the significant investment (time & money) it currently makes in the education of military children by ensuring that receiving states treat these children with the same consideration as does your own.

Moreover, schools that support large military facilities are accustomed to meeting the needs of the military family community (though still in need of coordination with other states and districts for smooth and uniform transitions). However, there are many more schools in each member state that do not have large numbers of military children and are therefore not accustomed to the unique needs and circumstances of military families. The intent of the Interstate Compact is to provide consistent standards in all school districts so a student from a military family can be assured of a smooth transition regardless of where the school is located.