

	Advisory Opinion Number 1-2011	Page Number:
<p align="center">MIC 3 Advisory Opinion Issued by: Executive Director- BG(R) Norman E. Arflack Chief Legal Counsel: Richard L Masters</p>		
State Requesting Opinion: Virginia	Dated: January 18, 2011	
Description: How should the military compact be interpreted in regards to the acceptance for credit of tests administered in other states?		

Background:

Pursuant to Article X, Section C. of the Interstate Compact on Educational Opportunity for Military Children (hereinafter ‘Compact’) the State of Virginia has submitted a request for an advisory opinion pertaining to the interpretation of the compact.

Issues:

Virginia seeks guidance concerning the following:

The Virginia Department of Education would like further guidance from the Military Interstate Children’s Compact Commission concerning how the military compact should be interpreted in regards to the acceptance for credit of tests administered in other states.

Applicable Compact Provisions or Rules:

Article VII GRADUATION provides:

“In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:”

Article VII, B. of the Compact provides:

“B. Exit exams - States shall accept: (i) exit or end-of-course exams required for graduation from the sending state, (ii) national norm-referenced achievement tests, or

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(iii) alternative testing acceptable to the receiving state, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of subsection C of this Article shall apply.”

Review and Analysis

While Article VII, Section B allows a receiving state to accept 'exit or end-of-course exams required for graduation from the sending state,' “national norm-referenced achievement tests, or alternative testing acceptable to the receiving state, in lieu of testing requirements for graduation in the receiving state’ from the sending state, this compact provision also recognizes that there may be circumstances in which these alternatives ‘cannot be accommodated.’ For example, when the student transfer occurs in the Senior year, Article VII, Section C. then authorizes the LEA to work with the sending state to secure a diploma there if the student meets the sending state’s graduation requirements , this section also assumes that this will only occur "after all alternatives have been considered."

The intent of this section is clear from the context of the language used and is consistent with the overall purpose of this section which, as stated in the first sentence of Article VII, is “to facilitate the on time graduation of children of military families.” In its request Virginia reports that “Board of Education regulations and guidance allow some latitude in determining whether out-of-state tests meet Virginia standards for awarding credit.”

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Further, Virginia states that “Under Board guidance, LEAs may automatically accept end-of-course tests administered in other states and upon request from the LEA, the Department will review another state’s comprehensive examination to determine if it is of sufficient rigor to be used for awarding credit.”

Certainly the Virginia Legislature, by enacting the Compact, has established that the public policy of Virginia, as a member of the compact, is to ‘remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by . . . facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.’ *See Compact, Article I.*

Given the Legislature’s declaration of public policy, the interpretation of such questions which arise concerning the proper construction of the compact statute or administrative rules not only requires recourse to the ‘plain meaning’ of the words used, but also requires that the provisions of the statute or regulation be interpreted in harmony with other statutory or regulatory provisions governing the conduct in question. “*Plain meaning is examined by looking at the language and design of the statute as a whole.*” *See Lockhart v. Napolitano*, 573 F.3d 251 (6th Cir. 2009);) in accord *Barnes v. Holder*, 625 F.3d 801, 806 (4th Cir. 2010), see also *Graham County Soil & Water Conservation Dist. v. U.S. ex rel Wilson*, 245 U.S. 409, 415 (2005).

Moreover such provisions must be interpreted consistent with the intent of the legislative body which adopted the provisions in question and “*interpretations of a statute which*

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would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purposes are available.” See Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).

Conclusion

Considering the overarching purposes of the Compact as well as the language used in the compact provisions referenced above, Article VII, B. allows the State to exercise reasonable discretion concerning determinations as to whether a prior test administered in a sending state contains reliable indicators of a student’s satisfactory completion of a particular course. However such requirements must be applied in a reasonable manner which does not “impose barriers to educational success” and which does “facilitate the on time graduation of children of military families.” See *Compact Articles I and VII.*