

	<p><b>Number:</b> <b>1-2018</b></p>
<p><b>Advisory Opinion issued by:</b> Cherise Imai, Executive Director Richard L Masters, General Counsel</p>	<p><b>Dated:</b> June 15, 2018 <b>Approved:</b> June 21, 2018</p>
<p><b>Requestor:</b> State of Tennessee</p>	
<p><b>Description:</b> Does the Compact allow for districts and schools to share student information with their State Compact Commissioner in order to resolve a case?</p>	

**I. Background**

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

**II. Issue**

The Commissioner from Tennessee has requested guidance from the Military Interstate Children’s Compact Commission concerning whether the Compact allows a Local Education Authority (LEA) to share student information with their State Compact Commissioner in order to resolve a case. An LEA stated that under FERPA, they were unable to discuss or share student information with the State Compact Commissioner as the individual is not employed by the LEA or State Education Authority (SEA) until both the parent and State Compact Commissioner signed a FERPA waiver and confidentiality forms.

**III. Applicable Compact Provisions or Rules**

Article I H of the Compact states as follows:

*“It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:*

*H. Promoting flexibility and cooperation between the educational system, parents, and students in order to achieve educational success for students.*

Article VIII C of the Compact states as follows:

*“The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.”*

Article IX of the Compact states as follows:

*“The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:*

*A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.”*

#### **IV. Review and Analysis**

The Federal Educational Rights and Policy Act (FERPA) is a Federal law that is administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA applies to all educational agencies and institutions (e.g., schools) that receive funding under any program administered by the Department. FERPA generally prohibits the improper disclosure of personally identifiable information derived from education records.

However, “school officials,” including teachers, within a school are permitted access to personally identifiable information contained in education records in which the school has determined that they have a “legitimate educational interest” in the information. While the term “school official” is not defined in FERPA the U.S. Department of Education generally interprets the term to include parties such as: professors; instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

MIC3 has been enacted by every legislature in the United States for the purpose of *“promoting flexibility and cooperation between the educational system, parents, and students in order to achieve educational success for students.”* In order to do so, Commissioners who are statutorily appointed by each state to represent that state’s participation in the compact are charged with carrying out the compact’s purposes which includes interaction with the public schools. (See Art. VIII C.). The work of the Commission is clearly defined by the compact as being a state function and it is a joint agency of the member states with powers conferred upon it by the respective legislatures of the member states. (See Art. IX A.).

As such the work of the MIC3 Commissioners as provided in the compact legislation is equivalent to members of school related committees or boards as provided by the State legislature. As such MIC3 Commissioners should be recognized as persons which comprise those school officials which are permitted access to personally identifiable information from education records related to the school transitions made by school aged children of active duty military members to whom the compact is intended to benefit. Without the ability to discuss relevant records of students in military families, the ability to apply and enforce the compact is significantly impaired. It is unreasonable to conclude that the MIC3 statute does not imply that information in which an MIC3

Commissioner has a “legitimate educational interest” under the compact should be accessible while such Commissioner is carrying out the responsibilities imposed upon Commissioners under the Compact.

#### **IV. Conclusion**

MIC3 Commissioners should be recognized as persons which comprise those school officials which are permitted access to personally identifiable information from education records related to the school transitions made by school aged children of active duty military members to whom the compact is intended to benefit.

Without the ability to discuss relevant records of students in military families, the ability to apply and enforce the compact is significantly impaired. It is unreasonable to conclude that the MIC3 statute does not imply that information in which an MIC3 Commissioner has a “legitimate educational interest” under the compact should be accessible while such Commissioner is carrying out the responsibilities imposed upon Commissioners under the Compact.