

	<p>Number: 3-2011</p>
<p>Advisory Opinion issued by: BG(R) Norman E. Arflack, Executive Director Richard L Masters, General Counsel</p>	<p>Dated: January 18, 2011</p>
<p>Requestor: Virginia State</p>	
<p>Description: Whether Department of Defense schools should be treated as local education agencies (LEAs) for purposes of students transferring from a DOD school into a public school in Virginia or any other member state under the military compact.</p>	

I. 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 concerning clarification of three issues pertaining to the compact.

II. Issues:

Virginia seeks guidance concern the following:
The Virginia Department of Education would like further guidance from the Military Interstate Children's Compact Commission concerning whether Department of Defense (DOD) schools should be treated as local education agencies (LEAs) for purposes of students transferring from a DOD school into a public school in Virginia or any other member state under the military compact.

III. Applicable Compact Provisions or Rules:

Article II. H. of the Compact provides:

"H. 'Local education agency' means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions."

Article III, B. of the Compact provides:

"B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact."

IV. Review and Analysis

The compact clearly defines a 'local education agency' as a public authority established "by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational

institutions.” See Compact, Article II, H. In equally unambiguous terms Article III, B. provides that the provisions of the compact “shall only apply to local education agencies as defined in this compact.”The intent of this section is clear from the plain meaning of the language used to make the compact applicable to state created public educational institutions. As the U.S. Supreme Court recently reaffirmed, “Applying ‘settled principles of statutory construction,’ we must first determine whether the statutory text is plain and unambiguous and . . . [i]f it is, we must apply the statute according to its terms.” Carciere v. Salazar, 555 U.S. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-254 (1992).

Notwithstanding these provisions, a new policy of the Department of Defense requires its schools to comply with the provisions of the compact and both the Department of Defense and the Interstate Commission on Educational Opportunity for Military Children are engaged in negotiations to adopt a Memorandum of Understanding in this regard. The MOU will seek to encourage and facilitate voluntary accommodation of children from DOD schools who are transferring to public schools in member states from DOD schools in the U.S. and overseas. However, neither the compact nor the MOU will permit direct enforcement of the provisions of the compact or it’s authorized rules against a “non-state” entity. See *Compact Article II, H. and Article III, B. supra*.

While federal participation in compacts is not unusual, actual membership of a federal agency as a party to a compact can only be achieved through congressional consent. See CAROLINE N. BROUN, MICHAEL L. BUENGER, MICHAEL H. MCCABE & RICHARD L. MASTERS, THE EVOLVING USE AND THE CHANGING ROLE OF INTERSTATE COMPACTS, A PRACTITIONER’S GUIDE § 2.2 (ABA Publishing, 2007)

V. Conclusion

In summary, while the literal provisions of the compact are only enforceable against state created public educational institutions (LEA’s), it is the policy of both the Interstate Commission for Educational Opportunity for Military Children and the Department of Defense to voluntarily promote, to the maximum extent permitted by law, the accommodation of students transferring from a DOD school into a public school in Virginia or any other member state under the military compact.