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<p align="center"><b>MIC 3 Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director- BG(R) Norman E. Arflack</b>  <b>Chief Legal Counsel: Richard L Masters</b></p>	<b>Dated:</b> <b>June 13, 2013</b>	
<b>State Requesting Opinion: Rhode Island</b>		
<b>Description:</b>  <b>Whether an individual member of the military has standing to intervene in a complaint against a member state for alleged non-compliance under the military compact.</b>		

**Background:**

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

**Issue:**

The Commissioner from Rhode Island would like further guidance from the Military Interstate Children’s Compact Commission (MIC3) concerning whether an individual member of the military has standing to intervene in a complaint against a member state for alleged non-compliance under the military compact.

**Applicable Compact Provisions or Rules:**

Article IX. J. of the Compact provides that the Interstate Commission shall:

“J. Create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state”

Article X, D. of the Compact provides, in relevant part, that among powers which the Interstate Commission shall have under the Compact is the power:

“D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.”

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### **Review and Analysis**

The Commissioner for Rhode Island seeks guidance from the Executive Committee of the Interstate Commission on Educational Opportunity for Military Children (also referred to as the MIC3) concerning a request to intervene in the case of a complaint against the State of Rhode Island by an active duty military family assigned to the Naval War College at Newport Rhode Island, having transferred from another compact member state in July of 2012. The officer in question and his wife have several children, two (2) of whom are under IEPs from California.

The family alleges that the Office of Special Education of the Rhode Island public school district in question failed to implement or improperly changed the IEPs for these two children. The family also advised that they are pursuing the issue as an alleged violation of IDEA, but also requests intervention of the Commission under the Compact. These issues were brought to the attention of the Compact Commissioner for Rhode Island on January 2, 2013, who advised the Commission of her discussion of these concerns with the military family involved before forwarding these concerns to the MIC3 national office. The Commissioner for Rhode Island was also involved in extensive deliberations and exchange of email and other communications with the family as well as local education officials in Rhode Island. According to the Commissioner, the local school district has made reasonable efforts to accommodate the students in question but there remains a disagreement between the Office of Special Education and the family about the nature and extent of the proffered IEP implementation in Rhode Island, which, as previously stated, is being pursued as allowed by law as a violation under IDEA.

The family involved in this situation also independently contacted the MIC3 national office about these matters and was informed, by both the MIC3 national office and by the Commissioner for Rhode Island, that based upon the information submitted, it appears that the family has confused the legal rights that they may have to contest the action of the State of Rhode Island, in this case under the IDEA regulations, with the provisions of the Compact,

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which provides no such alternative, and that, in any event, the family cannot compel the Commission to take individual legal action on their behalf in this matter.

Notwithstanding this response, the military family also chose to escalate their concerns to the Office of Educational Partnership and Non-DoD School Programs and Department of Defense Education Activity (DoDEA) of the U.S. Department of Defense. The DoD, through its ex-officio, non-voting representative to the Commission, in turn, brought the matter to the attention of the MIC3 Executive Committee. The Rhode Island Commissioner seeks an opinion from the Commission, acting through the Executive Committee, concerning whether a military family has standing to intervene in such a complaint against a member state for alleged non-compliance or the right to require the Commission to take enforcement action on their individual behalf against a member state under the provisions of the Compact.

Article IX (J) of the Compact provides for the creation of "a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency." However, this section of the Compact also states that, *"This section shall not be construed to create a private right of action against the Interstate Commission or any member state."*

In equally unambiguous terms Article X. (D) of the Compact reserves the exclusive power and authority to enforce compliance with the compact to the Interstate Commission, which is composed of the member states. The intent of these sections is clear, from the plain meaning of the language used, to limit legal standing to compel the enforcement of the provisions of the Compact to the member states. As the U.S. Supreme Court recently reaffirmed, "Applying

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‘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.” Carciery 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).

To the extent the above section permits military families to "inform the Interstate Commission" of an "alleged violation of the compact" with regard to the proffered IEP by the State of Rhode Island, the Commission has now been so informed by the military family in question in this case. While the Executive Committee clearly has the discretion to review such matters, it is equally clear under the above referenced compact provisions that an individual military member has no authority to compel the Commission to take action in such matters, since only member states have legal standing to enforce the provisions of the Compact against another member state or states.

Accordingly, because of the above referenced statutory limitation, while individual military members are encouraged to bring complaints containing allegations of non-compliance to the attention of MIC3, they do not have the legal standing to compel an investigation or other compliance or enforcement action, by the Interstate Commission, against the State of Rhode Island or any other member state.

**Conclusion**

In sum, while the Interstate Commission on Educational Opportunity for Military Children welcomes communication from military families concerning complaints of alleged violations of the Compact, there is no private remedy available to individual military members or families

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whereby they may compel the Commission to take action on their individual behalf. (*See Compact Art. IX, Section J*).