

	<p><b>Number:</b> <b>2-2017</b></p>
<p><b>Advisory Opinion Issued by:</b> Cherise Imai, Executive Director Richard L Masters, General Counsel</p>	<p><b>Dated:</b> March 10, 2017 <b>Approved:</b> March 28, 2017</p>
<p><b>Requestor: State of Hawaii</b></p>	
<p><b>Description:</b> Whether the provisions of Article IV, D. of the Interstate Compact on Educational Opportunity for Military Children (MIC3) and Rule 3.102 (b) require documentation for enrollment in Kindergarten?</p>	

I. **Background**

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

II. **Issue**

The Commissioner from Hawaii would like further guidance from the Military Interstate Children's Compact Commission concerning whether the provisions of Article IV, D. of the Compact and MIC3 Rule 3.102 (b) require documentation for enrollment in Kindergarten?

III. **Applicable Compact Provisions or Rules**

Article IV, Section D. of the Compact, in relevant part provides:

*"Kindergarten and First grade entrance age – Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age.*

MIC3 Rule 3.102 (b) provides, in relevant part, that:

*"Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from an LEA in the sending state at the time of transition, regardless of age. In the case of a Kindergarten student, the student must have been enrolled and attended class in the sending state in order to assure continued attendance in Kindergarten in the receiving state."*

MIC3 Rule 3.102 (b) (3) provides, in relevant part, that:

*"In order to be admitted into a school of the state (to which the student is) being transferred such a student transferring from an out-of-state school must provide the following data:*

- (i) Official documentation that the parent(s) or guardian(s) were resident(s) of the state in which the child was previously enrolled in school;*
- (ii) An official letter or transcript from the proper school authority which shows the record of attendance, academic information, and grade placement of the student;"*

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

In her request for a legal opinion concerning the interpretation and application of the above referenced MIC3 Compact and rule provisions the Hawaii Commissioner states as follows:

*"I am asking for an official legal opinion on this case as a way for our school personnel to better understand the conditions under which they must allow a military child to attend kindergarten in Hawaii even though she is only 4 years old--and the conditions under which enrollment can be denied. Hawaii had very good reasons, based on sound research and experience, for setting the attendance age as it has been set, and admitting underage children undermines the efforts the state has made to improve the education students get in Hawaii public schools.*

*We need to know what response the MIC3 National Office will have when, in cases like this one in the future, the child is denied entry to kindergarten here, based on our state law and the full requirements of the "kindergarten rule" of the Interstate Compact (Chapter 300, Sec 3.102, para (b). Note that although the child in this case could go to kindergarten here under the assumption that she had started kindergarten in the sending state, when I was made fully aware of all the facts and I then carefully read all the subparagraphs of the kindergarten rule, I would have denied this child entry.*

*Paragraph (b)(3)(i) indicates that the parents must show documentation that they "were resident(s) of the state in which the child was previously enrolled in school." In the case in question here (and in others that have happened here), the parents have moved to Hawaii and established residence here, then one of them has returned to the previous state and enrolled the child, having them attend only one day in most cases, then coming back to Hawaii.*

*Because the parents were residents of Hawaii and no longer residents of the previous state when the child was enrolled, I would judge this as not meeting the residence requirement described in paragraph (b)(3)(i). By the way it is written, the implication is that the parents were residents of the former state at the time that the child was enrolled. Taking them child back to that state and enrolling her after establishing residence in Hawaii would appear to NOT be consistent with the wording and meaning of this rule. As you can see, it is in interpretation of the residency requirement that we need to know the national office agrees."*

Our analysis of the application of both the statute and the rule begins with an examination of its text. Article IV, Section D. of the Compact states that “*Students **shall be allowed** to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state in the sending state at the time of transition, regardless of age.* (emphasis supplied).

This compact provision must also be read together with the provisions of MIC3 Rule 3.102, sub section (b) which clarifies that “*In the case of a Kindergarten student, the student **must have been enrolled and attended class in the sending state** to assure continued attendance in Kindergarten in the receiving state, and sub-section (b) (3) which requires that “to be admitted into a school of the state (into which the student is) being transferred,” that certain data must be provided including (i) Official documentation that the parent(s) or guardian(s) were resident(s) of the state in which the child was previously enrolled in school; and (ii) An official letter or transcript from the proper school authority which shows record of attendance, academic information, and grade placement of the student.”*

A harmonious reading of the above statute and rule provisions indicates the intent of these compact provisions, as well as the above referenced rules, is to require that a Kindergarten student must be enrolled in Kindergarten in the receiving state if the student has, in fact, been enrolled and attended Kindergarten in the sending state. Unfortunately, there are cases such as the Hawaii Commissioner describes in her request for an opinion where there is an attempt by parents to ‘game the system.’ The Hawaii Commissioner explains, “*In the case in question here (and in others that have happened here), the parents have moved to Hawaii and established residence here, then one of them has returned to the previous state and enrolled the child, having them attend only one day in most cases, then coming back to Hawaii.*

However, the provisions of the Compact and rules in this regard have been drafted in a manner which requires that a student in such circumstances must have been residents of the sending state from which the student has transferred and the parents of such a student must provide the receiving school district with “an official letter or transcript from the proper school authority which shows a record of attendance, academic information, and grade placement of the student. *An official letter or transcript from the proper school authority which shows record of attendance, academic information, and grade placement of the student.*”

In the case example cited by the Commissioner from Hawaii, the student in question could properly have been denied enrollment under the circumstances described where the military family in question had already moved to Hawaii and after the fact one of the parents returned to the state where the family previously resided and enrolled the student in Kindergarten which the student attended for one (1) day. As the U.S., Supreme Court has recently reaffirmed the “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Utility Air Regulatory Group v. EPA* 134 S. Ct. 2427 (2014); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)

This result is also consistent with the provisions of MIC3 Rule 3.101 (b) (3) which require a transcript showing a record of attendance and academic information which could not

possibly be available if the student only attended class for one (1) day as indicated in Hawaii's opinion request. Interpretations of statutes or administrative rules leading to 'absurd results' are to be avoided. See *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982) ("It is true that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.") see also *U.S. v. American Trucking Assns., Inc.*, 310 U.S. 542-43 (1940).

**V. Conclusion**

In summary, the provisions of Article IV, D. of the Interstate Compact on Educational Opportunity for Military Children (MIC3) and Rule 3.102 (b) require documentation of both residence and an official letter or transcript from a proper school authority which includes information concerning record of attendance and academic information for enrollment in Kindergarten.