

	<p>Number: 1-2021</p>
<p>Advisory Opinion issued by: Cherise Imai, Executive Director Richard L Masters, General Counsel</p>	<p>Dated: July 1, 2021 Approved: August 19, 2021</p>
<p>Requestor: State of Arkansas</p>	
<p>DESCRIPTION: What is the extent of the authority of the Commission and Commissioners under Article V, C. of the Interstate Compact on Educational Opportunities for Military Children (“MIC3”) and its duly authorized rules concerning services for eligible students under the Individuals with Disabilities Education Act (“IDEA”).</p>	

I. Background

Pursuant to Article X, Section C. of the Interstate Compact on Educational Opportunity for Military Children (hereinafter ‘MIC3’) the State of Arkansas has submitted a request for an advisory opinion concerning clarification of an issue pertaining to the Compact regarding services for eligible students under the Individuals with Disabilities Education Act (“IDEA”).

II. Issue

The Commissioner from Arkansas has requested guidance from the Military Interstate Children’s Compact Commission concerning the extent of the authority of the Compact Commissioners under Article V. C. of MIC3. The Commissioner asks some related questions including the following: What can a Commissioner do regarding a Special Education case? At what point should the Commissioner refer the case to the Special Education unit of the LEA (school district) or SEA (State Education Agency or Department)?

III. Applicable Compact Provisions or Rules

Art. V. C. of the Compact provides in relevant part as follows:

“C. Special education services – 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq, the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to Address the needs of incoming students with disabilities, subject to an existing 504 or

Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.”

IV. Review and Analysis

In reviewing the authority of an MIC3 Commissioner with regard to an eligible student under the compact who is seeking accommodation under the IDEA as a student with disabilities, it is important to note that Article V., Section C. 1. of the compact is referencing federal law and citing the appropriate provisions of the United States Code which impose federal requirements on public school districts with respect to students with disabilities in order to secure the rights of these children to receive the same education as children who are not disabled. The specific requirements to enforce the federal law were put in place by the U.S. Department of Education, and the IDEA has been amended a number of times to stay current with the needs of children with disabilities as they are discovered through research. Under the IDEA funding is provided to schools and organizations that follow guidelines to ensure equal educational opportunity for disabled children and public-school districts must comply with these requirements in order to receive further funding. **The IDEA is also enforced in conjunction with the No Child Left Behind Act (emphasis supplied).**

Section V. C. 2. of MIC3 similarly cites Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (IDEA). According to the U.S. Department of Education, approximately 5.5 million children with disabilities receive special education and receive special education related services and are protected by IDEA. However, some children with special needs do not receive services under IDEA, but are served under Section 504, which is a civil rights law which prohibits discrimination on the basis of disabling conditions by programs and activities receiving or benefitting from federal financial assistance. Schools must provide these children with reasonable accommodations comparable to those provided to their peers under Section 504. Although not a financing statute, **Section 504 provides for enforcement by the federal Office of Civil Rights and a school found to be out of compliance may lose its federal funding (emphasis supplied).**

The criteria for identification, eligibility, appropriate education, and due process procedures are provided under IDEA and Section 504. Public school districts are required to provide for the implementation of these programs pursuant to the provisions of the federal law and federal regulations. As a consequence, neither the MIC3 Commission or the Commissioners have the authority or responsibility under federal law to implement the requirements set forth in the IDEA or Section 504 or Title II of the ADA with respect to identification of or eligibility for these programs.

As the U.S., Supreme Court has held with regard to statutory interpretation, “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.” *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009); See also *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (“When the statute’s language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms.”) (internal quotation marks omitted).

While the receiving state has responsibility under Art. V. C. of MIC3 to provide “comparable services” and “shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities” the determination of whether “*comparable services*” have been provided, or “reasonable accommodations and modifications to address the needs of incoming students with disabilities” have been made must be decided by the responsible federal agencies. It is clear from the plain meaning of the provisions of Art. V. C. in this regard that both the Commission and the Commissioners of the respective states must rely upon the expertise of the above federal agencies pursuant to the provisions of Article V. C. of MIC3 which require such determinations to be made “In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the American with Disabilities Act, 42 U.S.C.A. Sections 12131-12165.

Once it is determined by the appropriate agency within a state that the receiving state has failed to provide “comparable services” or “reasonable accommodations and modifications to address the needs of an incoming student” have not been provided, then the provisions of MIC3 of the Compact require a receiving state to take appropriate action to see that an eligible student is properly enrolled based upon this provision of MIC3. If the requisite determination has not been made when a special education case of this nature has been referred to an MIC3 Commissioner, such a case should be referred to the requisite Special Education Division of the State Department of Education.

V. Conclusion

It is clear from the plain meaning of the provisions of Art. V. C. in this regard that both the Commission and the Commissioners of the respective states must rely upon the expertise of the above federal agencies pursuant to the provisions of Article V. C. of MIC3 which require such determinations are required to be made “in compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165.”

Once it is determined by the appropriate agency within a state that the receiving state has failed to provide “comparable services” or “reasonable accommodations and modifications to address the needs of an incoming student” have not been provided, then the provisions of MIC3 Compact would apply and require a receiving state to take appropriate action to see that an eligible student is properly enrolled based upon this provision of MIC3. If the requisite determination has not been made when a special education case of this nature has been referred to an MIC3 Commissioner, such a case should be referred by the Commissioner to the requisite Special Education Division of the State Department of Education.