

**RULES COMMITTEE MINUTES**  
**Tuesday, April 11, 2023**  
**2:30 – 3:30 PM ET**

|         |                   |                                   |                           |
|---------|-------------------|-----------------------------------|---------------------------|
| PRESENT | Mary Gable        | Maryland Commissioner             | Chair                     |
|         | Kathleen Berg     | Hawaii Commissioner               |                           |
|         | Darrell Floyd     | Oklahoma Commissioner             |                           |
|         | Davina French     | North Dakota Commissioner         |                           |
|         | Ben Rasmussen     | Utah Commissioner                 |                           |
|         | Davis Whitfield   | NFHS                              | Ex-officio Representative |
|         |                   |                                   |                           |
| EXCUSED | Cindy Hunt        | Oregon Commissioner               |                           |
|         | Daniel Dunham     | Virginia Commissioner Designee    |                           |
|         | Michael Rodriguez | Delaware Commissioner             |                           |
|         |                   |                                   |                           |
| STAFF   | Cherise Imai      | Executive Director                |                           |
|         | Lindsey Dablow    | Training and Operations Associate |                           |
|         | Christina King    | Communications Associate          |                           |

**ITEM 1 – CALL TO ORDER**

1. The meeting was called to order by Chair Mary Gable (MD) at 2:01 PM ET.

**ITEM 2 – ROLL CALL**

2. Roll call was taken by Training and Operations Associate Lindsey Dablow. A quorum was established.

**ITEM 3 – INTRODUCTIONS**

3. Communications Associate Christina King was introduced to the Committee.

**ITEM 4 – APPROVAL OF AGENDA**

4. Commissioner Kathleen Berg (HI) motioned to approve the agenda as amended. The motion was seconded by Commissioner Darrell Floyd (OK). Motion carried.

**ITEM 5 – APPROVAL OF MINUTES – February 7, 2023**

5. Commissioner Floyd motioned to approve the minutes as amended. The motion was seconded by Commissioner Ben Rasmussen (UT). Motion carried.

**ITEM 6 – REPORTS**

6. **EXECUTIVE COMMITTEE (EXCOM)** – Chair Gable informed Members the EXCOM met on March 16, 2023 and were informed the Tier Groups would meet in June 2023. Members were asked to contact Ms. Dablow if they had not received a Tier Group meeting notice. The EXCOM was updated on National Office activities and informed the *Legal Perspectives: Commissioner and State Council*

*Role and Responsibilities* webinar would be available on mic3.net. Members were encouraged to review the webinar and share it with their State Council members.

7. The EXCOM reviewed two items featured on the Rules Committee agenda. The Data Collection Analysis Memo and the Review and Analysis of MIC3 Policy Guide. There being no questions, Chair Gable moved to New Business.

## ITEM 7 – NEW BUSINESS

8. **Embry Memorandum: Review and Analysis of MIC3 Policy Guide** – Chair Gable explained General Counsel completed a thorough review of the Commission's policies and made recommendations to convert four (4) current policies into Commission Rules. Chair Gable summarized General Counsel's memo noting the EXCOM has power to create policies for the Commission; however, any enforcement action must be grounded in a Commission Rule or the Compact statute language because when a state becomes part of the Compact, the state is consenting to be governed by the Commission's rule-making authority.

9. The Chair noted General Counsel recommended *2-2017 Code of Conduct (CoC)*, *2-2019 Conflict of Interest (CoI)*, *1-2017 State Coordination*, and *1-2019 Resolving Compliance Issues* become Rules and prepared draft Rules language for the Committee to review. Chair Gable yielded the floor to Ms. Dablow to review the language for proposed *Rule SEC. 7.105 Conduct of Commissioners*. Ms. Dablow noted the CoC and CoI policies place additional requirements on the Commission and contain enforcement language. She noted the National Office edited the draft language to include staff.

10. Chair Gable clarified the current practice of the Commission is to sign a CoC and CoI form annually, and the proposed Rule would maintain the current practice moving it from a policy to a rule. Ms. Dablow confirmed that would be the action and reminded Members there is a process and policy for resolving compliance issues which General Counsel also recommended be converted to a rule. Commissioner Berg questioned the addition of "staff" and Commissioner Rasmussen expressed concern related to Section (a) (1) (ii) noting the Commissioner is expected to act in the best interest of their state which may not always be in the best interest of the Commission, staff, or the MIC3 community at large.

11. Chair Gable yielded the floor to Executive Director Cherise Imai, and she responded "staff" was added to the language because they are part of the Commission and would also be bound by the language; however, if the Committee did not support the inclusion of "staff" it could be removed. Commissioner Rasmussen clarified he did not oppose staff abiding by the proposed rule only that it should not be included in section (a) (1) (ii) because the Compact Commissioner does not have to act "in the best interest" of staff, the Compact, or the Commission which is not the responsibility of the Commissioner. He suggested rewording the section.

12. Commissioner French asked if the Commission had numerous compliance issues and if there was a process to address compliance issues. Chair Gable responded the recommendation to convert the CoC and CoI policies was not made because of compliance issues instead, based on General Counsel's recommendation, because it places an additional requirement on the Commissioner and has enforcement language it should be in a rule instead of policy. Commissioner French stated she did not understand the need for a rule when Commissioners are already holding themselves accountable. She asked if there is a process to address compliance issues. Commissioner Berg stated, based on General Counsel's recommendation, her understanding was to enforce the CoC and CoI it needed to be a rule. Commissioner Berg agreed the enforcement of the rule should be outlined.

13. Commissioner Rasmussen asked why the Commission could not send a letter to the appointing authority based on a policy. He stated he did not think the two current policies needed to be a Commission Rule and did not support developing a rule based on the current policies.

14. Chair Gable asked Ms. Dablow to provide comment and background on the proposed rules. Ms. Dablow noted a thorough review of the Commission's policies was an action item on the current strategic plan and several committees would review the memo produced by General Counsel. She explained proposed *Rule SEC. 7.108 Conduct of Commissioners* was the combination of the CoC and CoI policies. *SEC. 7.106 Escalation and Reporting of Disputes* was developed from policy 1-2019 *Resolving Compliance Issues* which outlines escalation of compliance issues within the Commission. Ms. Dablow replied, to Commissioner French's question, it is the process currently used by the Compliance Committee to address compliance issues and has been in effect since 2019. She explained the purpose of moving the process from a policy to a rule was not because there is an immediate compliance issue. However, based on General Counsel's recommendation and discussion with other Interstate Compacts it is a best practice because policies are intended to guide the internal administration of the Commission whereas rules provide governance.

15. Ms. Dablow stated the third proposed *Rule SEC. 8.101 Coordination Between States and Commission*, was based on policy 1-2017 *State Coordination* that outlines state reporting requirements, including the end-of-year reporting and annual state council meeting requirement. She again noted the current policy places additional reporting obligations on the states and compliance requirements.

16. Commissioner Berg provided background on the rule's development process and creation of the Commission Rules book. She noted the Rules book highlights areas of the Compact statute outlining Commissioner obligations based on the statute language. Commissioner Berg noted the proposed rules were not placing additional conditions on Commissioner because the requirement already exists in the statute language.

17. Chair Gable asked Commissioner Rasmussen for language to amend section (a) (1) (ii) of proposed *Rule SEC. 7.105 Conduct of Commissioners*. Commissioner Rasmussen suggested, "Each Commissioner shall be respectful and work in good faith with the Commission, the Member States, staff, and the MIC3 community at large." He reiterated his support of the language being contained in a policy not in a rule. Commissioner Berg asked if Commissioner Rasmussen would accept, "act at all times with respect and work in good faith with..." which Commissioner Rasmussen agreed to. Commissioner Berg asked if Commissioner Rasmussen thought the language should acknowledge the Commissioner does act on behalf of their state and he agreed it should.

18. ED Imai suggested creating a new subsection (ii) to add "Understanding Commissioners act in the best interests of their state;" which would make the former subsection (ii) now (iii). Commissioner Rasmussen asked if the Committee had to adopt the proposed Rules at this meeting and Chair Gable asked ED Imai to provide the timeline for passage of proposed Rules. ED Imai stated the Committee had time but would need to vote on it during their meeting in June if they wanted the proposed rule to be voted on at the 2024 ABM. She noted, under the Promulgation of Rules process, passage by the Rules Committee would allow the full Commission 30 days to review the proposed Rules language and provide comment to the Rules Committee for their consideration. After the 30-day Commission comment period, the Rules Committee would consider the comments from their fellow Commissioners. Upon review of their colleague's comment the Rules Committee then has two options to amend the language and pass it out of Committee for a final review by EXCOM before a vote by the full Commission at ABM or determine not to pass the language out of Committee.

19. The Members determined to review the proposed rules and provide feedback via email prior to the June 13, 2023 Rules Committee meeting.
20. **External Legislative Toolkit** – Chair Gable reminded Members the Committee discussed non-compact related topics during the February committee meeting and asked headquarters to develop a legislative toolkit that would assist states that wanted to pursue external statute language to address non-compact related issues. The proposed legislative toolkit was similar to the one developed to address the National Guard and Reserve following the 2022 ABM. The Chair highlighted the General Counsel Guidance section. ED Imai reviewed the process for submitting proposed statute language to headquarters for review by General Counsel to ensure it does not conflict with the Compact statute.
21. Commissioner Berg asked which states were working on external statute language and ED Imai responded Pennsylvania and Virginia submitted language during the 2023 legislative session, and a couple other states informed headquarters their state was considering developing an external statute to provide similar coverage as the Compact to other populations for the 2024 legislative season. Chair Gable noted the toolkit would be on the agenda as a voting item for the June 13, 2023 meeting.
22. **Promulgation of Rules Proposed Amendment** – Chair Gable explained the proposed amendment to the Promulgation of Rules process would provide a deadline for submission of proposed new rules or amendments to existing rules. It would require proposed language be submitted to the Rules Committee no later than February 28 of the current fiscal year to be eligible for a full vote of the Commission during the current year's ABM. This proposed deadline is intended to allow the Rules Committee time to complete the steps outlined in *Compact Rules SEC. 2.101 Adoption of Rules; Amendments* and the Promulgation of Rules guidance.
23. Commissioner Rasmussen asked if there was a clause to allow for an emergency rule and it was confirmed there is outlined in *Rule SEC. 2.101*. He voiced support for editing the language to include the February 28 deadline. Commissioner Berg suggested amending the language to include reference to the Emergency Clause provided in the guidance.
24. Commissioner French asked if instead of a date could the language reflect “120 days following the ABM” and Chair Gable asked the Members to consider the best course of action and table this item until the Committee meets in June.

## ITEM 8 – OLD BUSINESS

25. **Case and Inquiry Report** – Ms. Dablow reviewed the Case and Inquiry Report and noted as of April 2023 headquarters had assisted with 55 cases. She explained 42% of the inquiries were from parents followed by 20% from Commissioners and 20% from School Liaisons. Of the 55 cases, 36 (65%) were not Compact related and 18 (33%) were. Ms. Dablow noted most Compact-related cases originated from *Article V Course Placement* followed by *Article VII Graduation*. Of the cases that were not Compact related, school choice was the main topic headquarters was contacted about. Ms. Dablow highlighted recent inquiries related to Pre-K programs and Kindergarten entrance age. She explained the Department of Defense (DoD) initiative to install universal Pre-K programs within all the DoD Education Activity (DoDEA) schools may increase the number of cases received due to military child transitioning from a Pre-K DoDEA program to a public school where the child does not meet the kindergarten entrance age.
26. **Strategic Plan (Update)** – Chair Gable reviewed the action items assigned to the Rules Committee noting the Committee is on track to meet its goals for the first year of the Strategic Plan.

27. **Embry Memo: Data Collection Analysis (Update)** – Chair Gable explained each standing committee was asked to provide feedback regarding data points relevant to the implementation of the Compact and transitioning military children. Feedback would be provided to the Rules Committee once the standing committees have met and provided suggested data points for collection.

#### **ITEM 9 – OTHER BUSINESS AND ANNOUNCEMENTS**

28. **Feedback for the EXCOM** – No items were brought forth for the EXCOM.

29. Oklahoma Commissioner Darrell Floyd informed the Committee of his retirement from Enid Public Schools and resignation as Oklahoma's Compact Commissioner effective on June 30, 2023.

30. **Commission Election Key Dates** – Chair Gable shared the Commission Election Key Dates with Members for their awareness.

#### **ITEM 10 – ADJOURNMENT**

31. **With no further business to conduct, Commissioner French motioned to adjourn the meeting. Commissioner Rasmussen seconded the motion. Motion carried.**

32. The meeting was adjourned at 3:07 PM ET.