



Embry Merritt Womack Nance, PLLC  
Chase Tower, 201 E. Main St., Ste. 1402  
Lexington, KY 40507

P 859.543.0453  
F 800.505.0113  
W emwnlaw.com

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Ms. Geraldine Valentino-Smith  
Director, Defense State Liaison Office  
Office of the Deputy Assistant Secretary of Defense  
**Via email to [geraldine.valentino-smith.civ@mail.mil](mailto:geraldine.valentino-smith.civ@mail.mil)**

RE: Interstate Compact on Educational Opportunity for Military Children

Dear Ms. Valentino-Smith:

As you may know, our office represents the Interstate Compact on Educational Opportunity for Military Children (the “Compact”). Please allow this letter to serve as a response to your request of April 2, 2024 regarding your request for information for facilitation of congressional report requirements under Sec. 579 of the NDAA. The obligations of Sec 579(c) of the NDAA require the Secretaries concerned to submit a report containing the recommendations developed under Sec. 579(a), utilizing the considerations set forth in Sec. 579(b) to identify barriers to certain modifications and/or improvements to the Compact. The mandate of Sec. 579 does not require the preparation of the report by the Compact or its Commission (nor could such mandate be properly asserted for the reasons set forth below).

Regardless, this response is provided to facilitate the exchange of information. In sum, this letter will clarify and affirm the sovereignty of the Compact, identify the paramount barriers to Compact modification (even for the purpose of “improvement,”) and reiterate the Compact Commission’s position on the issues identified by your communication.

### **THE COMPACT**

In 2006, the Council of State Governments’ National Center for Interstate Compacts, in cooperation with the U.S. Department of Defense, national associations, federal and state officials, State Departments of Education, and school administrators, drafted model legislation for the creation of the Interstate Compact on Educational Opportunity for Military Children (“the Compact”). The Compact provides for the uniform treatment of military children transferring between school districts and states by addressing key educational transitions such as eligibility, enrollment, placement, and graduation. Once the model legislation was prepared, it was subsequently adopted into law by all fifty states and the District of Columbia.

First and foremost, a compact is a demonstration of state sovereignty, expressed through the creation of a joint governmental body comprised of each member state. It is an adaptive tool for ensuring cooperative action among the states that has the character of both statute and contract between two or more states. Unlike federally imposed mandates that often dictate unfunded and rigid requirements, interstate compacts provide a state-developed structure for collaborative action, while building consensus among the states and evolving to meet new and increased demands over time.

Compacts are created when two or more states adopt identical statutes which set forth the terms of the underlying agreement between them. Other states may join the Compact by enacting identical compact statutes. Once the required number of states has adopted the pact, the “contract” among them is valid and becomes effective as provided. The compact represents an agreement between the States to share their sovereign power, and as such its rules supersede any conflicting state statute and/or policy. While a compact without Congressional consent does not supersede federal law, it provides the authority for member states to work together to ensure the provisions of the compact are applied consistently and within the confines of the legislation. However, the Compact is always limited to the specific terms set forth in the enabling legislation enacted in the member states.

## NDAANALYSIS

Sec. 579 of the NDAA outlines several items for consideration in the report containing recommendations for Compact improvement. In implementing any initiative, under Article XII: Rulemaking Functions of the Interstate Commission, the Commission is vested with rulemaking powers. A basic axiom of the rulemaking power, however, is that the ability to promulgate Rules is limited to the authority vested in the Commission by the authorizing statute (i.e. the Compact). In other words, if the Compact does not address a particular area of concern, the rulemaking power cannot be used to expand or add to the scope of the Compact. Rules can merely clarify, operationalize, or otherwise augment the language of the Compact, but in no event can the Rules expand it.

With regard to expanding the scope of the Compact, the terms of the statute states that no amendment to the Compact will be effective or binding on the member states until it is universally adopted by statute in every member state. Since, as noted above, the Compact cannot be expanded through rulemaking, adding additional areas or objectives to the Compact’s functions would require amending the Compact statute in every member state. Not only is this a prohibitively lengthy and costly process, the Commission has already considered the issue of unanimous statutory amendment to expand scope. After extensive discussion and debate, ultimately it was directed by affirmative vote of the Commission in 2022 that it declines to “reopen” the Compact statutes in the member states in order to expand its scope.

With regard to specific recommendations, Sec. 579(b) requests that the congressional reports address barriers to implementing two specific areas of identified importance. First, the reports are asked to “[i]dentify any barriers to the ability of a parent of a transferring military-connected child to enroll the child, in advance, in an elementary or secondary school in the State in which the child is transferring, without requiring the parent or child to be physically present in the State.” As noted above, the Compact itself is limited by the scope of matters set forth in the Compact. While the Compact addresses enrollment matters affecting military-connected children, the language of the Compact does not provide a broad catch-all authority to weigh in regarding enrollment in general—thus, enrollment protections for military-connected children are limited by the statute. As outlined above, because advanced enrollment was not part of the original model statute adopted by the fifty states and the District of Columbia, unanimous consent by the member states is required. This approval is not forthcoming, as noted above. Further, every member state must legislatively modify the statute to implement such an initiative. This is not feasible.<sup>1</sup>

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<sup>1</sup> Sec. 579 also addresses data collection on this matter; as advanced enrollment is outside the scope of the Compact, the Commission does not track the number of military-connected students enrolled in such programs, nor does the Commission have the ability to clarify the language of state statutes which are unrelated to the Compact.

Second, Sec. 579 requires that the report “[i]dentify any barriers to the ability of a transferring military-connected child who receives special education services to gain access to such services and related supports in the State to which the child transfers within the timeframes required under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).” The Compact addresses the IDEA and requires states to provide comparable services when a student transitions interstate between public and USDOD schools. In 2019, the Commission developed resources to provide support and clarification regarding the Compact’s application to special education services. The documents include Legal Advisory 1-2021, Compact IDEA Narrative, IDEA Flowchart and IDEA/SPED Case Resolution Process. These are available on the Commission’s website at <https://mic3.net/commissioner/>.

While the Compact supersedes state education laws that are in conflict with the Commission’s rules, it does not replace federal legislation such as the IDEA and other special education statutes. Due to this, Compact commissioners refer IDEA cases to the appropriate department of education or special education division within their state. Additionally, the state councils which oversee the Compact’s implementation in each state include a representative from the state education agency. As the IDEA is a federal law and outside of the Commission’s statutory mandate, further initiatives regarding this objective (to the extent not already addressed by the Compact and the IDEA in conjunction) are more appropriately directed to the US Department of Education.

It is noted that the Commission supports the provision of a letter or memorandum of support to military families to assist them as they transition from state to state. The Commission would welcome the opportunity to develop a marketing and communication plan with the USDOD to educate parents, inform commanders, and build awareness of the Compact across services.

## **ENFORCEMENT**

In addition to the foregoing matters, your communication asked for information regarding enforcement matters and enforcement status. The Commission would consider enforcement of the Compact to be a compliance issue. The Commission has an active Compliance Committee along with promulgated Rules related thereto, including an escalating notice and default process that ensures States and the local education authorities are implementing the Compact in a manner that is consistent with the statute. The relevant Rules are published on the Commission’s website at [https://mic3.net/wp-content/uploads/2020/06/MIC3-Rules-Book\\_Dec2023\\_WEB\\_1-10-24.pdf](https://mic3.net/wp-content/uploads/2020/06/MIC3-Rules-Book_Dec2023_WEB_1-10-24.pdf) for your reference.

## **IMPLEMENTATION OF ADVISORY RECOMMENDATIONS**

Sec. 579 notes that “[t]he Secretaries concerned, in consultation with States through the Defense State Liaison Office (DSLO) shall develop recommendations to improve the Military Interstate Children’s Compact.” While the Commission welcomes feedback and the opportunity to improve delivery of the Compact to students, the Compact itself is first and foremost limited by the scope of the Compact. Any flexibility that does exist in Compact governance is squarely within the authority of the Compact Commission, a joint governmental agency comprised of delegates representing each member State. Your communication asked for the status of specific implementation of various outside recommendations. To be clear, the Commission has a defined strategic planning process that is in three-year cycles and voted



on by the Commission at the relevant annual business meeting. It is not the practice of the Commission to undertake ad hoc implementation of objectives for improvement; rather, such recommendations and potential initiatives are considered by the Commission as a whole, consolidated into a coherent forward-looking plan, and voted upon by the Commissioners. The preliminary steps of the next strategic plan cycle are being undertaken currently.

It is also noted that while recommendations and dialogue regarding the Compact are welcome, those recommendations are advisory only and have no binding effect on the Commission. Under the Promulgation of Rules, a new rule or rule amendment may only be proposed by a Compact participant—that is, a compact commissioner, a standing committee of the Commission, or by any regional group of states as may be subsequently recognized by the Commission. As the Commission itself is comprised of delegates from each member State, the States’ collective votes will determine the precise path for the mechanics of Compact implementation.

Finally, the Commission reiterates that it is committed to working collaboratively with all of its agency stakeholders (including Homeland Security, Health and Human Services, and Commerce in addition to the USDOD) in order to address feedback, suggestions, or concerns, and enhance awareness of the Compact. Of note, the Department of Defense Instruction, No. 1342.29 dated January 31, 2017, outlines the agreement between the Commission and the USDOD. Unfortunately, full implementation of the DODI has not been achieved to date. Specifically, the directive under the Instruction establishing a committee within DoDEA (referred therein as “DoDEA Committee”) has not been implemented. Completion of the same would facilitate the more thorough exchange of information and receipt of feedback for the furtherance of the Compact’s objectives as well as assist in carrying out the policy outlined in the Instruction.

It is my hope that this letter addresses the information referenced in Sec. 579 of the NDAA and affirms the Commission’s position on these various items.

Sincerely,

A handwritten signature in blue ink that reads 'Samantha T. Nance'. The signature is fluid and cursive, with the first name being the most prominent.

Samantha T. Nance