

**INTERSTATE COMPACT ON
EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN**

INTERSTATE COMMISSION MEETING

-- Rules (*amended - November 2011*) --

INTRODUCTION:

Upon activation of the Interstate Compact a year ago, one of the first tasks necessary for the Commission was the creation of administrative rules under which the Compact would operate. A Rules Committee was formed and over the past year, the Committee met on several occasions to develop the rules. Comments were solicited from various stakeholders and input was considered. The rules complement the Interstate Compact and may not conflict with it. In addition, the rules are not designed to address every issue arising under the Compact, however, there is flexibility to make reasonable changes or clarification as the need arises through amendment, advisory opinions, and training opportunities. Attached is a final draft of the proposed rules for your consideration. The full Commission will be voting on the rules at our November meeting. Please review prior to then and we look forward to seeing you at the conference in Palm Springs.

Chapter – 100 DEFINITIONS

SEC. 1.101 Definitions

As used in these rules, unless the context clearly requires a different construction—

- A. “Active duty” means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.
- B. “By-laws” means: those by-laws established by the Interstate Commission on Educational Opportunity for Military Children for its governance, or for directing or controlling the Interstate Commission’s actions or conduct.
- C. “Children of military families” means: a school-aged child(ren), enrolled in kindergarten through twelfth (12th) grade, in the household of an active duty member.
- D. “Compact commissioner” means: the voting representative of each compacting state, appointed pursuant to Article VIII of this compact.
- E. “Days” means: business days, unless otherwise noted.
- F. “Deployment” means: the period one (1) month prior to the service members’ departure from their home station on military orders through six (6) months after return to their home station.
- G. “Education(al) records” means: those official records, files, and data directly related to a student and maintained by the school or local education agency (LEA), including but not limited to records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.
- H. “Extracurricular activities” means: a voluntary activity sponsored by the school or LEA or an organization sanctioned by the LEA. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.
- I. “Interstate Commission on Educational Opportunity for Military Children” means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

- J. “Local education agency” means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth (12th) grade public educational institutions.
- K. “Member state” means: a state that has enacted this compact.
- L. “Military installation” means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.
- M. “Non-member state” means: a state that has not enacted this compact.
- N. “Receiving state” means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.
- O. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.
- P. “Sending state” means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.
- Q. “State” means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. territory.
- R. “Student” means: the child of a military family for whom the LEA receives public funding and who is formally enrolled in kindergarten through twelfth (12th) grade.
- S. “Transition” means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.
- T. “Uniformed service(s)” means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.
- U. “Veteran” means: a person who served in the uniformed services and who was discharged or released under conditions other than dishonorable.

Chapter 200 – GENERAL PROVISIONS

Section 2.102 Adoption of rules; amendment

Proposed rules or amendments to the rules shall be adopted by majority vote of the members of the Interstate Commission in the following manner:

- (a) Proposed new rules and amendments to existing rules shall be submitted to the Interstate Commission office for referral to the Rules Committee as follows:
 - (1) Any Commissioner may submit a proposed rule or rule amendment for referral to the Rules Committee during the annual Commission meeting. This proposal must be made in the form of a motion and approved by a majority vote of a quorum of the Commission members present at the meeting;
 - (2) Standing Committees of the Commission may propose rules or rule amendments by majority vote of that Committee;
 - (3) Any regional group of states as may be subsequently recognized by the Commission may propose rules or rules amendments by a majority vote of members of that region;
- (b) The Rules Committee shall prepare a draft of all proposed rules and provide the draft to all Commissioners for review and comments. All written comments received by the Rules Committee on proposed rules shall be posted on the Commission's website upon receipt. Based upon the comments made by the Commissioners, the Rules Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the Commission no later than the next annual meeting falling in an odd-numbered year.
- (c) Prior to promulgation and adoption of a final rule by the Interstate Commission, the text of the proposed rule or amendment shall be published by the Rules Committee no later than thirty (30) days prior to the meeting at which the vote is scheduled, on the official web site of the Interstate Commission and in any other official publication that may be designated by the Interstate Commission for the publication of its rules. In addition to the text of the proposed rule or amendment, the reason for the proposed rule shall be provided.
- (d) Each administrative rule or amendment shall state—
 - (1) The place, time, and date of the scheduled public hearing;
 - (2) The manner in which interested persons may submit notice to the Interstate Commission of their intention to attend the public hearing and any written comments; and
 - (3) The name, position, physical and electronic mail address, telephone, and telefax number of the person to whom interested persons may respond with notice of their attendance and written comments.

- (e) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made, which case the person or entity making the request shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the public hearing if it chooses to do so.
- (f) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Interstate Commission at hearings required by this section.
- (g) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Interstate Commission shall consider all written and oral comments received.
- (h) The Interstate Commission shall, by majority vote of a quorum of the commissioners, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (i) Not later than sixty (60) days after a rule is adopted, any interested person may file a petition for judicial review of the rule in the United States district court of the District of Columbia or in the federal district court where the Interstate Commission's principal office is located. If the court finds that the Interstate Commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedures Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside.
- (j) Upon determination that an emergency exists, the Interstate Commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. An emergency rule is one that must be made effective immediately in order to--
 - (1) Meet an imminent threat to public health, safety, or welfare;
 - (2) Prevent a loss of federal or state funds;
 - (3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - (4) Protect human health and the environment.

SEC. 2.103 Data collection and reporting

- (a) As required by the compact, and as specified by the operational procedures and forms approved by the commission, the states shall gather, maintain and report data regarding the transfer and enrollment of students who transfer from one state LEA to another state LEA under this compact.
- (b) Each state shall report to the commission annually the number of students transferred to a LEA from another state and received from another state's LEA in the previous year.
- (c) Reports required under sec. 2.103 (a) and (b) shall be received by the Commission no later than June 30 of each year.

SEC. 2.104 Dues formula

- (a) The commission shall determine the formula to be used in calculating the annual assessments to be paid by states. Public notice of any proposed revision to the approved dues formula shall be given at least 30 days prior to the Commission meeting at which the proposed revision will be considered.
- (b) The Commission may consider the population of the states, the number of students subject to the compact within each state, and the volume of student transfers between states in determining and adjusting the assessment formula.
- (c) The approved formula and resulting assessments for all member states shall be distributed by the commission to each member state annually.
- (d) The dues formula shall be based on the figure of one dollar per child of military families eligible for transfer under this compact, and beginning in FY 2014 this calculation shall be based upon the State in which each military family resides, except that effective FY 2013, and each year thereafter, no state dues assessment shall exceed the sum of sixty thousand dollars (\$60,000.00) per year and effective FY 2014, and each year thereafter, no state dues assessment shall be less than two thousand dollars (\$2,000.00).

SEC. 2.105 Forms

States may use the forms or electronic information system authorized by the commission for communication regarding transfers of students subject to this compact between or among states.

Chapter 300 – TRANSFER OF EDUCATION RECORDS AND ENROLLMENT

SEC. 3.101 Eligibility for transfer and enrollment

- (a) *Unofficial or “hand-carried” education records* – In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible. In the event a state or LEA charges a fee for copies of educational records, such a fee shall not exceed the reasonable cost of reproduction.
- (b) *Official education records/transcripts* - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) business days except for a designated school staff break including, but not limited to, spring, summer, or holiday. Records should be furnished as soon as possible following the return of staff from a school staff break; however, the time shall not exceed ten (10) days after the return of staff.

SEC. 3.102 Application for transfer of student records and enrollment

An application for transfer of educational records of students subject to this compact shall contain the following:

- (a) *Immunizations* – Compacting states shall give thirty (30) calendar days from the date of enrollment. For a series of immunizations, initial vaccinations must be obtained-within thirty (30) calendar days.
- (b) *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 LEA in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

- (1) Any student who transfers from an out-of-state public school and who does not meet regular age requirements for admission to the school of the state being transferred into shall be admitted upon presentation of the data required in subsection (3).
- (2) Any student who transfers from an out-of-state nonpublic school and who does not meet regular age requirements for admission to a public school in the state being transferred, shall be admitted if the student meets age requirements for public schools within the state from which he or she is transferring, and if the transfer of the student's academic credit is acceptable under rules of the school board. Prior to admission, the parent or guardian must also provide the data required in subsection (3).
- (3) In order to be admitted into a school of the state 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 record of attendance, academic information, and grade placement of the student;
 - (iii) Documented evidence of immunization against communicable diseases; and
 - (iv) Evidence of date of birth.

Chapter 400 -- GRADUATION

- (a) *Waiver requirements* – LEA administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. If the receiving LEA requires a graduation project, volunteer community service hours, or other state or LEA specific requirements, the receiving LEA may waive those requirements.
- (b) *Exit exams* – States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests or 3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Article VII, Section C shall apply.
- (c) *Transfers during senior year* – *There may be cases in which a military student transferring at the beginning or during his or her senior year is ineligible to graduate from the receiving LEA after all alternatives have been considered. In such cases the sending and receiving LEA's shall ensure the receipt of a diploma from the sending LEA, if the student meets the graduation requirements of the sending LEA. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.*

Chapter 500 – PLACEMENT & ATTENDANCE

SEC. 5.101 Course placement

- (a) The receiving school shall initially place a student who transfers before or during the school year in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state to the extent the educational courses are provided by the receiving school. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. The receiving school may perform subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s). The receiving school may allow the student to attend similar educational courses in other schools within the LEA if the receiving school does not offer such educational courses.

SEC. 5.102 Educational program placement

- (a) The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). The receiving school may perform subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s). The receiving school may allow the student to attend similar educational courses in other schools within the LEA if the receiving school does not offer such programs.

SEC. 5.103 Special education services

- (a) 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
- (b) 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.
- (c) The receiving school may perform subsequent evaluations to ensure appropriate placement and appropriate services. The receiving school shall follow any current regulations the receiving state has in place in order to comply with federal or state law.

SEC. 5.104 Placement flexibility

- (a) LEA officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the LEA.

SEC. 5.105 Absence as related to deployment activities

- (a) A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the Compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the LEA superintendent or head of school to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian. Notwithstanding the above, the LEA superintendent or head of school may provide a maximum number of additional excused absences.

Chapter 600 -- ELIGIBILITY

SEC. 6.101 Eligibility for Enrollment

(a) *A custody order, special power of attorney, or other applicable document relative to the guardianship of a child of a military family and executed under the applicable law of each member state shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent. A special power of attorney form, which is acceptable in some jurisdictions, can be obtained through the JAG offices pursuant to Military Family Care Plan regulations.*

(1) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent. Tuition may be charged for optional programs offered by the LEA.

(2) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

The local education agency shall not charge tuition. In addition, transportation to and from school is the responsibility of the non-custodial parent or other persons standing in loco parentis.

(b) *Eligibility for extracurricular participation* – State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, with consultation with the state high school athletic association, to the extent they are otherwise qualified. Application deadlines include tryouts, summer conditioning and other coach or district prerequisites.

Chapter 700 – OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

SEC. 7.101 Informal communication to resolve disputes or controversies

States shall attempt to resolve disputes or controversies by communicating with each other by telephone, telefax, or electronic mail.

(b) Failure to resolve dispute or controversy

(1) Following an unsuccessful attempt to resolve controversies or disputes arising under this compact, its by-laws or its rules as required under sec. 7.101 (a), states shall pursue one or more of the informal dispute resolution processes set forth in sec. 7.101 (b)(2) prior to resorting to formal dispute resolution alternatives.

(2) Parties shall submit a written request to the executive director for assistance in resolving the controversy or dispute. The executive director shall provide a written response to the parties within ten (10) days and may, at the executive director's discretion, seek the assistance of legal counsel or the executive committee in resolving the dispute. The executive committee may authorize its standing committees or the executive director to assist in resolving the dispute or controversy.

SEC. 7.102 Formal resolution of disputes and controversies

(a) *Alternative dispute resolution* – Any controversy or dispute between or among compacting states that arises from or relates to this compact that is not resolved under sec. 7.101 may be resolved by alternative dispute resolution processes. These shall consist of mediation and arbitration.

(b) Mediation and arbitration

(1) Mediation

- (i) A state that is party to a dispute may request, or the executive committee may require, the submission of a matter in controversy to mediation.
- (ii) Mediation shall be conducted by a mediator appointed by the executive committee from a list of mediators approved by the national organization responsible for setting standards for mediators and pursuant to procedures customarily used in mediation proceedings.

(2) Arbitration

- (i) Arbitration may be recommended by the executive committee in any dispute regardless of the parties' previous submission of the dispute to mediation.
- (ii) Arbitration shall be administered by at least one neutral arbitrator or a panel of arbitrators not to exceed three members. These arbitrators shall be selected from a list of arbitrators maintained by the commission staff.

- (iii) The arbitration may be administered pursuant to procedures customarily used in arbitration proceedings and at the direction of the arbitrator (arbiter?).
- (iv) Upon the demand of any party to a dispute arising under the compact, the dispute shall be referred to the American Arbitration Association and shall be administered pursuant to its commercial arbitration rules.
- (v)(a) The arbitrator (arbiter?) in all cases shall assess all costs of arbitration, including fees of the arbitrator* and reasonable attorney fees of the prevailing party, against the party that did not prevail.
 - (b) The arbitrator* shall have the power to impose any sanction permitted by this compact and other laws of the state or the federal district in which the commission has its principal offices.
- (vi) Judgment on any award may be entered in any court having jurisdiction.

SEC 7.103 Enforcement actions against a defaulting state

- (a) If the Interstate Commission determines that any state has at any time defaulted (“defaulting state”) in the performance of any of its obligations or responsibilities under this Compact, the by-laws or any duly promulgated rules the Interstate Commission may impose any or all of the following penalties:
 - (1) Damages or costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;
 - (2) Remedial training and technical assistance as directed by the Interstate Commission;
 - (3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state’s legislature, and the state council.
- (b) The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this compact, Interstate Commission by-laws, or duly promulgated rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of suspension.

- (c) Within sixty (60) calendar days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.
- (d) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.
- (d) The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the Interstate Commission and the defaulting state.
- (e) Reinstatement following termination of any compacting state requires both a reenactment of the Compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

SEC 7.104 Judicial enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

