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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 89

[Docket ID: DOD-2014-OS-0020]

RIN 0790-AJ33

Interstate Compact on Educational Opportunity for Military Children

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Proposed rule.

SUMMARY: DOD is establishing policies based on section 539 of Public Law 111-84 to implement the Interstate Compact on Educational Opportunity for Military Children (referred to as the “Compact”) within the DoD. The proposed rule provides components with policies to support the intent of the Compact, which is to aid the transition of school-age children in military families between school districts (to include between Department of Defense Educational Activity schools and state school districts). Each state joining the compact agrees to address specific school transition issues in a consistent way and minimize school disruptions for military children transferring from one state school system to another. The compact consists of general policies in four key areas: eligibility, enrollment, placement and graduation. Children of active duty members of the uniformed services, National Guard and Reserve on active duty orders, and members or veterans who are medically discharged or retired for one year are eligible for assistance under the Compact

DATES: Comments must be received by [insert date 60 days from date of publication].

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571-372-5357.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY

I. Purpose of this Rulemaking

This proposed rule provides components of the DoD with policies to support the intent of the Compact, which is to aid the transition of school-age children in military families between school districts. The intent of the program is to ensure children are enrolled immediately in their new school, placed in the appropriate academic program, and are able to graduate on time.

Each state joining the compact agrees to address specific school transition issues in a consistent way and minimize school disruptions for military children transferring from one state school

system to another. The compact consists of general policies in four key areas: eligibility, enrollment, placement and graduation.

As of August 2014, 50 states have passed legislation to become members of the compact, including most of those with large numbers of military residents. The Department of Defense Education Activity cannot be a member of the compact but is complying with its provisions in both overseas and domestic schools. In return, the compact member states have agreed to treat students coming from a DoDEA school as though they were transferring from a member state. The compact has provisions for member states to facilitate enrollment in the following areas:

Enrollment

- **Education records.** When a family leaves a school district in a member state, the parents may receive a set of unofficial records to carry to the new school in another member state. It will include all the information the new school needs to enroll and place the child until they receive the official records. In addition, the compact requires all sending school districts within member states to send official transcripts within 10 days of a request from the receiving state school district.
- **Immunizations.** If a child transferring to a member state needs additional immunizations, he or she may enroll and begin school. Parents then have 30 days to see that the child gets the required immunizations. If further immunizations are required, they must be started within 30 calendar days of enrollment. Tuberculosis testing is not covered under the compact since the TB test is not an immunization but rather a health screening.

- **Kindergarten and first grade entrance age.** If the entrance age requirement in the new school system is different, transitioning children may continue in the same grade if they have already started kindergarten or first grade where the family was previously stationed. This provision also allows children to move up to first or second grade, regardless of age requirements, if they have completed kindergarten or first grade in another state.

Placement and attendance

Students from military families often miss appropriate placement in required classes, advanced placement and special-needs programs while awaiting evaluation at the new school. The compact requires cooperation in the following areas:

- **Course and education program placement.** A receiving school district in a member state must initially honor placement of a student based on his or her enrollment in the sending state, provided the new school has a similar or equivalent program. The receiving school may evaluate the student after placement to ensure it is appropriate, but the school may not put children into "holding classes" while they await assessment. The receiving school may allow the student to attend similar education courses in other schools within the district if the receiving school does not offer such courses.
- **Special education services.** Students covered by the Individuals with Disabilities Education Act receive the same services (although not necessarily identical programs) identified in the individual education plan from the sending state. This is a parallel requirement under federal law.

- **Placement flexibility.** School districts are encouraged to determine if course or program prerequisites can be waived for students who have completed similar coursework in the sending school district. This process allows students to take advanced courses rather than repeat similar basic courses.
- **Absence related to deployment activities.** Students in member states may request additional, excused absences to visit with their parent or legal guardian immediately before, during and after deployment. Schools have flexibility in approving absences if there are competing circumstances such as state testing or if the student already has excessive absences.

Eligibility

The compact asks school districts in member states to examine their rules for eligibility to allow children of military parents to have the continuity they need.

- **Enrollment.** When a child of a deployed parent is staying with a non-custodial parent, a relative or a friend who is officially acting in place of the parents and lives outside of the home school district, the child may continue to attend his or her own school as long as the care provider ensures transportation to school. The compact also stipulates that a power of attorney for guardianship is sufficient for enrollment and all other actions requiring parental participation or consent.
- **Extracurricular participation.** When children transfer to a new school, their participation in extracurricular activities is facilitated - provided they're eligible - even if application deadlines and tryouts have passed. Schools must make reasonable accommodations but are not required to hold spaces open for military-related transferees.

Graduation

School transitions can be especially challenging for high school students. The compact requires school districts to make the following accommodations to facilitate on-time graduation:

- **Course waivers.** School districts in member states may waive courses required for graduation if similar coursework has been completed in another school. Such waivers are not mandatory under the compact, but a school district must show reasonable justification to deny a waiver.
- **Exit exams.** Under the compact, a school district may accept the sending state's exit exams, achievement tests or other tests required for graduation instead of requiring the student to meet the testing requirements of the receiving state. States have flexibility to determine what tests they will accept or require the student to take.
- **Transfers during senior year.** If a student moves during the senior year and the receiving state is unable to make the necessary accommodations for required courses and exit exams, the two school districts must work together to obtain a diploma from the sending school so the student can graduate on time.

The compact does not address the quality of education or require a state to change any of its standards or education criteria. The Military Interstate Children's Compact Commission (MIC3) has created a variety of downloadable brochures, webinars and other resources to help parents and educators learn more about the Compact - See more at: <http://www.mic3.net>

If a family has a concern about a provision of the compact as it relates to a child, it's best to contact the school first. Each installation has a school liaison to help work with schools to get

questions answered or to provide information on next steps to take if concerns cannot be successfully resolved.

II. Narrative Description of Legal Authorities for this Rule

The legal authorities for this rule clarify the definition of children in military families covered by this rule, cover the protections afforded these children, and provide the authority for establishing the policies included in this rule for the DoD Education Activity:

(1) 10 U.S. Code 2164 – Department of Defense Domestic Dependent Elementary and Secondary Schools. This citation states the Secretary of Defense may issue directives that the Secretary considers necessary for the effective operation of the school or the entire school system, outside of the authority given to the School Boards selected to oversee these schools. .

(2) 20 U.S. Code – Education, Chapter 25A – Overseas Defense Dependents’ Education § 921 – Defense Dependents’ Education System, and § 932 – Definitions. This citation provides the scope of the authority of the Secretary of Defense to define programs and activities to provide a free public education through secondary school for dependents in overseas areas.

III. Summary of the Major Focus Points of this Rulemaking

The major provisions of this regulatory action include designating DoD liaisons to State Councils of member states of the Compact, designating the DoD ex-officio member to the Compact Commission, implementing the relevant school transition policies established in the Compact within the DoDEA school system, and establishing a committee within DoDEA to advise on compliance by DoDEA school.

(1) As required by the Compact, states establish Councils to oversee the implementation of the Compact within the state. The Compact prescribes membership of the State Council, which may include a representative from the military community within the state. Since this individual

represents the interests of the military community to the State Council, the military representative can only fulfill a liaison role on the Council and must be designated by DoD. This rule defines the role for the military representative (§89.7(a)), along with the process (§89.7(b)) for coordinating the requests from State Commissioners and designating these military representatives.

(2) The Compact allows DoD to send an ex-officio representative to the Commission meetings, and also requires the DoD ex-officio representative to participate on the Executive Committee of the Commission. This rule provides guidelines for the DoD ex-officio representative (§89.7(d)).

(3) This rule establishes policies for DoDEA governing the transition of school age children in military families (§89.8 of this rule), which are equivalent to the following policies included in the Compact: Article IV – records and enrollment, Article V – placement and attendance, Article VI – eligibility for enrollment, and Article VII – graduation.

(4) This rule establishes a committee to advise DoDEA on compliance with provisions in §89.8. The DoDEA Committee also provides input to the ex-officio member of the Commission on issues arising from DoDEA school interactions with member States of the Compact, and acts as a counterpart to State Councils of member States. Policies for assigning a representative from the Military Departments to this committee are included in §89.7(c).

IV. Cost and Benefit Analysis:

There are no provisions in this proposed rule which are expected to increase costs for members of the public. Requirements included in this rule may require action to be taken by state education departments and local education agencies as a result of requirements of the state laws.

The cost to the Department are summarized below:

- (Military representative attending State Council meetings. State Council meetings are generally held at a central location for the state, and are expected to be held at least once per year. The military representative would be required, while on duty and at government expense, to travel to and attend the meeting. A meeting would be expected to demand an average of 1.5 days (travel and meeting time), which would cost an approximate average of \$564¹ in opportunity labor cost. Additionally, intrastate travel and per diem is expected to cost an approximate average of \$334.² States vary with regards to the number of military representatives they have requested to attend; however, the estimated number of military representatives is 77.³ Applying the approximate average costs per year provides \$43,430 in opportunity labor costs and \$25,720 in travel and per diem.
- Identifying, nominating and designating a military representative. DOD estimates approximately 76 hours⁴ of administrative time to coordinate nominations per year , plus approximately 76 hours⁵ to process, review, coordinate, sign and distribute the designation letters. The opportunity labor cost of coordination would be

¹ Cost estimated on the salary of a GS-14 step 5 without locality pay or percentage for benefits (average of \$47 per hour) times approximately 12 hours.

² Cost of travel calculated at an average round trip requiring 300 miles times the 2015 mileage rate of \$0.575 per mile (equals approximately \$172), plus per diem costs of \$129 per day (national estimate), plus proportional meals and incidentals for the second day of \$33 (\$162).

³ Estimated number of total military representatives for the 50 member states and the District of Columbia, based on the average of number currently designated in states with military representatives (41 reps in 27 states).

⁴ Estimate 3 hours of staff time to receive the request; relay the requirement to the designated Military Department and obtain approval; and provide the name to the Office of Secretary of Defense. Anticipate having to replace half of the military representatives each year (38).

⁵ Estimate 2 hours of staff time to prepare the letter of designation and accompanying documents and obtain a signature from the Deputy Assistant Secretary of Defense for Military Community and Family Policy. Anticipate processing 38 letters of designation per year.

approximately \$4,560⁶ and completing the designation letter, with accompanying documents, would be \$4,400⁷ per year.

- Ex-officio representation to the Military Interstate Child Compact Commission (MIC3). This individual participates in the annual conference, executive committee meeting and other standing committee meetings and would cost DOD approximately \$8,460 per year.⁸

Additionally, this proposed rule will direct DoDEA to transition children under specific policies. These are the same policies that are included in the Compact, Articles IV – VII, which have been shown to be cost-neutral (and perhaps a cost-benefit) when implemented by local education agencies within the states that are members of the Compact.⁹ Essentially, schools are responsible for transitioning children, and the proposed rules, based upon the transition policies included in the Compact, provide a consistent approach that schools apply in member states to the Compact. Hence, there is less variability and uncertainty in the process. Applying these policies within DoDEA is expected to produce similar results, since these policies would apply to all children within the DoDEA school system (therefore applying a consistent policy regardless of the child), and many of these proposed policies represent the existing procedures used in DoDEA schools to transition students. The DoD committee to oversee the

⁶ Cost estimated on the salary of a GS-13 step 5, without locality pay or percentage for benefits (average of \$40 per hour)

⁷ Cost estimated on the salary of a GS-14 step 5 with locality pay for Washington DC, but no percentage for benefits (average of \$58 per hour)

⁸ Cost estimated on three trips per year, each involving 3 days, at a location outside of Washington DC. The labor cost is estimated on the salary of a GS-15 step 5 with locality pay for Washington DC (no benefits included) time 72 hours (\$4,900), plus \$3,560 for travel and per diem.

⁹ Analysis accomplished by states as part of their legislative process showed that the provisions of the Compact supporting the transition of military children were fiscally neutral. Transition occurs regardless of having an organized process, and the provisions of the Compact were considered as providing consistent expectations and administrative procedures capable of reducing the cost of administering transition for military children.

implementation of this rule within DoDEA is expected to cost approximately \$3,250 per year¹⁰ to administer and conduct meetings.

The benefits derived from DoD's participation in the Compact accrue to Service members and their families, particularly the 707,000 school-age children educated by local education agencies and DoDEA.¹¹ These benefits have not necessarily been quantified, but can be described in qualitative terms. Military moves are stressful for the entire family, and transitioning to a new school creates stresses because of uncertainty. Military children are confronted with unknown academic and social challenges, and their parents must overcome new administrative requirements to enroll them. The provisions included in the Compact provide relief for some of the administrative requirements faced by parents and the academic issues regularly experienced by military children who generally attend six-to-nine different schools between kindergarten and 12th grade.¹² The goal of the Compact is to replace the widely varying treatment of transitioning military students with a comprehensive approach that provides a uniform policy in every school district in every state that chooses to join. Through more uniform transition policies, military children have an opportunity to assimilate into their classes, extra-curricular activities and new social circles more quickly. Additionally the Compact recognizes the difficulties military children may have with being separated from a parent due to a military deployment, allowing for liberal absences for children to be with the deploying/returning parents.

The Compact Articles IV – VII were developed as a result of input from 17 representative national and state stakeholders who were asked to participate in a working group sponsored by

¹⁰ Estimated on two meetings (each two hours in length) per year, attended by 12 people with an average salary of a GS-14 step 5, with Washington DC locality pay (not including benefits); plus 8 hours of preparation time for the two meetings by a GS-14 step 5, with Washington DC locality pay.

¹¹ 2013 Demographic Profile of the Military Community, DMDC Active Duty Military Family File (September 2013), page 132

¹² Council of State Governments, *“Interstate Compact on Educational Opportunity for Military Children Legislative Resource Kit,”* January 2008, page 1.

the Council of State Governments, National Center for Interstate Compacts.¹³ The majority of their recommendations came from work that had previously been presented in studies, such as the Military Child Education Coalition’s *Secondary Education Transition Study*, conducted for the U.S. Army in 2001, and the subsequent Memoranda of Agreement signed by nine school districts which addressed “the timely transfer of records, systems to ease student transition during the first 2 weeks of enrollment, practices that foster access to extracurricular programs, procedures to lessen the adverse impact of moves of juniors and seniors,[and] variations in school calendars and schedules,” among other recommendations.¹⁴

REGULATORY ANALYSIS

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be a significant regulatory action, although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

¹³ Contributing individuals and groups included: National Association of Elementary School Principals; National Military Family Association; Military Child Education Coalition; U.S. Department of Education; National School Boards Association; National PTA; Office of Lt Governor Beverly Purdue, NC; Alabama State Senator; National School Superintendents Association (Local School Superintendent); National Education Association; Military Impacted Schools Association; Maryland Department of Education; Ofc of the Under Secretary of Defense; California Department of Education; Nevada State Senator; and the Florida Department of Education; Education Commission of the States;

¹⁴ Kathleen F. Berg, “*Easing Transitions of Military Dependents into Hawaii Public Schools: An Invitational Education Link*,” *Journal of Invitational Theory and Practice* Volume 14, 2008, page 44

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule does not impose reporting and record keeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

This rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). It has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this rule preempts any State law or regulation. Therefore, DoD did not consult with State and local officials because it was not necessary.

List of Subjects in 32 CFR Part 89

Children, Education, Interstate compact.

Accordingly 32 CFR part 89 is proposed to be added to read as follows:

**PART 89—INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR
MILITARY CHILDREN**

Sec.

89.1 Purpose.

89.2 Applicability.

89.3 Definitions.

89.4 Policy.

89.5 Responsibilities.

89.6 Procedures.

89.7 Representatives to State Councils, the DoDEA Committee and MIC3.

89.8 Compact provisions.

Authority: 10 U.S.C. 2164, 20 U.S.C. 921-932.

§89.1 Purpose.

In accordance with section 539 of Public Law 111-84, this part establishes policy, assigns responsibilities, and provides procedures to implement the Interstate Compact on Educational Opportunity for Military Children (referred to in this part as the “Compact”) within the DoD.

§89.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

§89.3 Definitions.

These terms and their definitions are for the purposes of this part.

504 plan. A plan required pursuant to 29 U.S.C. 794 specifying the modifications and accommodations for a child with a disability to meet the individual educational needs of that child as adequately as the needs of children without disabilities are met. The plans can include accommodations such as wheelchair ramps, blood sugar monitoring, an extra set of textbooks, a peanut-free lunch environment, home instruction, or a tape recorder or keyboard for taking notes.

Children of military families. School-aged children who are enrolled in kindergarten through twelfth grade and are in the households of Service members who:

(1) Are on active duty, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1211;

(2) Are active duty or veterans who are severely wounded, ill, or injured; or

(3) Die on active duty or as a result of injuries sustained on active duty.

(4) Children of military members who are severely wounded, ill, or injured retain this designation for 1 year after discharge or retirement. Children of military members who die on active duty or as a result of injuries sustained on active duty, retain this designation for 1 year after death.

Deployment. The period 1 month prior to the military members' departure from their home station on military orders through 6 months after return to their home station.

Department of Defense Education Activity (DoDEA) Committee. A DoD committee established pursuant to this part by Director of DoDEA to advise DoDEA on compliance with provisions in §89.8 by DoDEA schools. The DoDEA Committee also provides input to the ex-officio member

of the Commission on issues arising from DoDEA school interactions with member States of the Compact, and acts as a counterpart to State Councils of member States.

Education records. Those official records, files, and data directly related to a child and maintained by the school or local educational agency (LEA) or state educational agency (SEA), including but not limited to, records encompassing all the material kept in the child'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 (IEPs).

Ex-officio member of the Commission. Non-voting member of the Commission who may include, but not be limited to, members of the representative organizations of military family advocates, LEA officials, parent and teacher groups, the DoD, the Education Commission of the State, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

Extracurricular activity. A voluntary activity sponsored by the school or LEA or SEA or an organization sanctioned by the LEA or SEA. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

IEP. When a child is identified as a child with disabilities in accordance with Individuals With Disabilities Education Act (IDEA), he or she must have a written document that describes the special education supports and services the child will receive. The IEP is developed by a team that includes the child's parents and school staff.

Interstate Compact on Education Opportunity for Military Children (the Compact). An agreement approved through State legislation that requires member States to follow provisions

supporting the transition of children of military families between school systems in member States. As part of joining the Compact, States agree to participate in the Commission and pay dues to the Commission to support its oversight of the Compact.

LEA. A public authority legally constituted by the State as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions. For the purpose of administering the provisions of the Compact in §89.8 of this part, DoDEA school districts as defined in 20 U.S.C. § 932 are equivalent to an LEA.

Member State. A State that has enacted the Compact.

Military Interstate Children’s Compact Commission (MIC3). The MIC3, also known as the Interstate Commission on Educational Opportunity for Military Children (sometimes referred to as the “Interstate Commission” or “the Commission”), is the governing body of the Compact composed of representatives from each member State, as well as various ex-officio members. The Commission provides general oversight of the agreement, creates and enforces rules governing the Compact, and promotes training and compliance with the Compact. Each member State will be allowed one vote on Compact matters, and the Commission will provide the venue for solving interstate issues and disputes.

Military Family Education Liaison. Individual appointed or designated by State Council of each member state to assist military families and the State in facilitating the implementation of the Compact. Military members and DoD civilian employees cannot perform this function.

Military installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under DoD jurisdiction, including any leased facility. (This term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.)

Military representative to a State Council. Individual designated by the Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)) to perform the duties and responsibilities defined in §89.5 of this part. The military representative is responsible for representing the interest of the DoD in fostering easier transition of children of military families according to their designation (installation representative, Military Department representative or statewide representative). The military representative will be a military member or DoD civilian who can remain in the position for at least 2 years and who has a direct interface with the State education system as part of official duties or has supervisory responsibility for those who do.

Military representative to the DoDEA Committee. Individual nominated to represent all four Services by the Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs (OASA(M&RA)), Office of the Assistant Secretary of the Navy for Manpower and Reserve Affairs (OASN(M&RA)), or Office of the Assistant Secretary of the Air Force for Manpower and Reserve Affairs (OASAF(M&RA)) on a rotational basis and appointed by the DASD(MC&FP) for a 2-year term. Because DoDEA is a DoD Component the military representative may act as a full participant in the DoDEA Committee.

Receiving State. The State to which a child of a military family is sent, brought, or caused to be sent or brought.

SEA. A public authority similar to an LEA, legally constituted by the State as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions for the entire State.

Sending State. The State from which a child of a military family is sent, brought, or caused to be sent or brought.

State. 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 or possession. For purposes of administering the provisions of the Compact in §89.8 of this part, DoD is considered a State and DoDEA is considered the equivalent of a State department of education for DoD.

State Council. A body that coordinates among government agencies, LEAs, and military installations concerning the member State's participation in and compliance with the Compact and the Commission activities. A member State may determine the membership of its own Council, but membership must include at least: the State superintendent of education; superintendent of a school district with a high concentration of military children; representative (as a liaison) from a military installation; one representative each from the legislative and executive branches of State government; and other offices and stakeholder groups the State Council deems appropriate.

Transition.

- (1) The formal and physical process of transferring from school to school; or
- (2) The period of time in which a child moves from a school in the sending State to a school in the receiving State.

Veteran. A person who served in the military and who was discharged or released from the military under conditions other than dishonorable.

§89.4 Policy.

In accordance with Section 539 of Public Law 111-84, "National Defense Authorization Act for Fiscal Year 2010" and DoD 5500.07-R, "Joint Ethics Regulations (JER)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf>), it is DoD policy to support the intent

of the Compact by reducing the difficulty children of military families (referred to in this part as “children” or “the child”) have in transferring between school systems because of frequent moves and deployment of their parents. DoD will support the Compact by:

(a) Designating military liaisons to State Councils of member States, the DoDEA Committee, and the MIC3.

(b) Implementing the intent of the Compact in the DoDEA to ensure:

(1) Timely enrollment of children in school so they are not penalized due to:

(i) Late or delayed transfers of educational records from the previous school district(s); or

(ii) Differences in entrance or age requirements.

(2) Placement of children in educational courses and programs, including special educational services, so they are not penalized due to differences in attendance requirements, scheduling, sequencing, grading, or course content.

(3) Flexible qualification and eligibility of children so they can have an equitable chance at participation in extracurricular, academic, athletic, and social activities.

(4) Graduation within the same timeframe as the children’s peers.

(c) Promoting through DoDEA and the Military Departments:

(1) Flexibility and cooperation among SEAs or LEAs, DoDEA, Military Departments, parents, and children to achieve educational success.

(2) Coordination among the various State agencies, LEAs, and military installations regarding the State’s participation in the Compact.

§89.5 Responsibilities.

- (a) Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)) oversees the implementation of this part.
- (b) Under the authority, direction, and control of the ASD (M&RA), the DASD(MC&FP):
- (1) Designates military representatives as liaisons to State councils, nominated by the Secretaries of the Military Departments by the procedures outlined in §89.7 of this part.
 - (2) Designates the DoD ex-officio member of MIC3, insofar as DoD is invited to do so by MIC3.
 - (3) Maintains a roster of designated liaisons to State councils in accordance with 32 CFR part 310.
 - (4) Monitors issues arising under the Compact :
 - (i) affecting children of military families attending and transferring between member State schools; and
 - (ii) the implementation of §89.8 of this part, affecting children of military families transferring between member state schools and DoDEA's schools (consisting of the Department of Defense Schools (DoDDS) – Europe, DoDDS – Pacific, and the Domestic Dependent Elementary and Secondary Schools (DDESS)).
- (c) Under the authority, direction, and control of ASD (M&RA), the Director, DoDEA:
- (1) To the extent allowable by 10 U.S.C. 2164 and 20 U.S.C. 921-932, adjusts operating policies and procedures issued pursuant to DoD Directive 1342.20, “Department of Defense Education Activity (DoDEA)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134220p.pdf>) to implement the provisions of the Compact described in §89.8 of this part.

(2) Informs boards and councils, described in DoD Instruction 1342.15, “Educational Advisory Committees and Councils” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134215p.pdf>) and DoD Instruction 1342.25, “School Boards for Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134225p.pdf>), of the Compact provisions in §89.8 of this part and the DoDEA administration of these provisions.

(3) Addresses disputes over provisions in §89.8 of this part between member States and DoDEA. When differences cannot be resolved with a member State, works with MIC3 to resolve these disputes.

(4) Establishes the DoDEA Committee to review compliance with the provisions in §89.8 of this part and to address issues raised by the Secretaries of the Military Departments concerning the implementation of these provisions.

(5) Ensures all personally identifiable information (PII) is collected, maintained, disseminated, and used in accordance with 32 CFR part 310.

(6) Ensures that DoDEA schools comply with §89.8 and that DoDEA school-level officials inform DoDEA students transferring to schools in member States of the benefits extended by receiving States under the Compact.

(d) The Secretaries of the Military Departments:

(1) Nominate military representatives, in accordance with the procedures outlined in §89.7 of this part, for designation as liaisons to State Councils by the DASD(MC&FP) when such DoD liaison is requested.

(2) Establish departmental policies and procedures to inform military communities of:

- (i) The provisions of this part as it affects children of military families attending and transferring between member State schools; and
 - (ii) the provisions in §89.8 of this part concerning students transferring between DoDEA and member State schools.
- (3) Procedures to resolve issues or challenges raised by parents concerning the provisions of §89.8 of this part.

§89.6 Procedures.

DoD implements policy in this part by:

- (a) Establishing a committee within DoDEA (referred to in this part as the “DoDEA Committee”).
- (b) Designating military representatives to the State Councils of the member States and the DoDEA Committee in accordance with procedures in §89.7.
- (c) Designating the ex-officio member to MIC3 in accordance with §89.5 and §89.7.
- (d) Ensuring DoDEA compliance with the selected provisions of the Compact described in §89.8.

§89.7 Representatives to State Councils, the DoDEA Committee and MIC3.

(a) Military Representatives as Liaisons to State Councils. In accordance with section 3-201 of DoD 5500.07-R, military representatives to State Councils will:

- (1) Be a military member or a civilian employee of DoD who has a direct interface with the State education system as part of official duties or has supervisory responsibility for those who do.
- (2) Only represent DoD interests (not the interests of the State Council), and consequently may not:

- (i) Engage in management or control of the State Council (therefore, may not vote or make decisions on daily administration of council);
 - (ii) Endorse or allow the appearance of DoD endorsement of the State Council or its events, products, services, or enterprises;
 - (iii) Represent the State Council to third parties; or
 - (iv) Represent the State Council to the U.S. Government, as prohibited by federal criminal statutes.
- (3) Make clear to the State Council that:
- (i) The opinions expressed by the representative do not bind DoD or any DoD Component to any action.
 - (ii) If included on State Council websites, all references to the representative by name or title must indicate that they are the “Military Representative” as opposed to a council member.
- (4) Notify the chain of command of issues requiring policy decisions or actions requested of the military community within the State.
- (5) When called upon to act as the spokesperson for one or more than one installation:
- (i) Get feedback from the designated points of contact at each military installation within his or her responsibility.
 - (ii) Coordinate proposed input to the State Council with the appropriate points of contact for each military installation within his or her responsibility.
 - (iii) Act as a conduit for information between the State Council and each military installation within his or her responsibility.

(iv) Provide feedback through the chain of command to the points of contact for each military installation within his or her responsibility and, as appropriate, to the OASA(M&RA), the OASN(M&RA), or the OASAF(M&RA).

(6) Notify the State Council and the appropriate Deputy Assistant Secretary of the Military Department listed in paragraph (a)(5)(iv) of this section, through the chain of command, of reassignment or other circumstances that would require a replacement.

(b) Nomination Process for Military Representatives to State Councils.

(1) In accordance with DoD 5500.07-R, military representatives are nominated by the Military Departments and designated by the DASD(MC&FP), not by State officials. Depending on the number of military representatives required by State statute, designating representatives to a State Council will be accomplished according to the processes outlined in Table 1:

Table 1. Process for Designating Military Representatives to State Councils

If State statute concerning military representatives provides for:	The State Commissioner contacts:	Who requests a selection be made by:	Whereupon the official written designation is made by:
One representative for all military children in the State	DASD(MC&FP)	OASA(M&RA), OASN(M&RA), or OASAF(M&RA) responsible for providing a representative for the State listed in Table 2	DASD(MC&FP)
One representative for each Military Service	DASD(MC&FP)	OASA(M&RA), OASN(M&RA), and OASAF(M&RA)	DASD(MC&FP)
One representative for each military installation in the State	DASD(MC&FP)	OASA(M&RA), OASN(M&RA) and OASAF(M&RA)	DASD(MC&FP)

(2) When there is more than one military representative to a State Council (e.g., one per installation or one per Military Department represented in the State), the individual appointed by the responsible Military Department (Table 2) will serve as the lead military representative when DoD must speak with a single voice.

(3) In circumstances where the State requests an individual by name, the DASD(MC&FP) will forward the request to the individual’s Military Department for consideration. If that Military Department is different from the one designated in Table 2, the DASD(MC&FP) will first obtain the concurrence of the responsible Military Department.

(4) Military representatives are expected to serve a minimum of 2 years. When notified by the incumbent military representative of the need for a replacement, the OASA(M&RA), OASN(M&RA), or OASAF(M&RA) will inform DASD(MC&FP) of the request.

(5) In accordance with the Compact, State officials appoint or designate the Military Family Education Liaison for the State. Service members and DoD civilians cannot be appointed or designated to fill this position for the State.

Table 2. Military Department Areas of Authority for Selecting a Single Military Representative for the State Council

MILITARY DEPARTMENT	AREAS OF AUTHORITY
Army	Alabama, Alaska, Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, New York, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Washington, West Virginia, Wisconsin
Navy	American Samoa, California, Connecticut, District of Columbia, Florida, Guam, Maine, Mississippi, New Hampshire, North Carolina, Northern Marianas, Oregon, Puerto Rico, Rhode Island, Tennessee, Virginia, Virgin Islands
Air Force	Arizona, Arkansas, Delaware, Idaho, Illinois, Massachusetts, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, South Dakota, Utah, Wyoming

(c) Military Representative to the DoDEA Committee. Membership of the DoDEA Committee will include a representative from one of the Military Services to represent all four Services. OASA(M&RA), OASN(M&RA), or OASAF(M&RA) will nominate a representative on a rotational basis who will be designated for a 2-year term by the DASD(MC&FP).

(d) Ex-Officio Member to MIC3. In accordance with section 3-201 of DoD 5500.07-R, the DoD ex-officio member to the Commission must:

(1) Be a military member or a civilian employee of DoD who can remain in the position for at least 2 years and who has a direct interface with DoDEA and the U.S. public education system as part of official duties or has supervisory responsibility for those who do.

(2) Attend as a liaison meetings of MIC3, its Executive Committee, and other standing committees where requested by the Commission.

(3) Only represent DoD interests (not the interests of MIC3), and consequently may not:

(i) Engage in management or control of MIC3 (therefore, may not vote or make decisions on daily administration of MIC3);

(ii) Endorse or allow the appearance of DoD endorsement of MIC3, or its events, products, services, or enterprises;

(iii) Represent the Commission to third parties; or

(iv) Represent MIC3 to the U.S. Government, as prohibited by criminal statutes.

(4) Make clear to MIC3 that:

(i) The opinions expressed by the incumbent do not bind DoD or any DoD Component to any action.

(ii) If included on MIC3 websites, all references to the incumbent by name or title must indicate that they are the “DoD Ex-Officio Member” as opposed to a MIC3 member.

(5) Notify the chain of command of issues requiring policy decisions or actions requested of DoD.

§89.8 Compact provisions.

(a) DoDEA Area School Districts Relationship With SEAs or LEAs in Member States.

(1) For the purposes of DoD’s implementation of the Compact in the schools it operates, DoDEA’s area offices (Department of Defense Dependent Schools – Europe, Department of Defense Dependent Schools – Pacific, and the Domestic Dependent Elementary and Secondary Schools) and their schools are considered as the equivalent of LEAs and SEAs, respectively.

(2) Each DoDEA area acts as the “receiving LEA” and “sending LEA” in working with LEAs or SEAs in member States.

(b) Articles IV Through VII of the Compact. This section describes the specific duties that DoDEA’s LEAs have as “sending” or “receiving” LEAs. DoDEA’s duties under this section will reciprocate the duties assumed by member State LEAs or SEAs to children of military families, as expressed by their respective State’s implementation of the Compact Articles IV through VII. DoDEA will implement the provisions described below, which, while retaining the intent of the Compact, have been modified as needed in the DoDEA context.

(1) Article IV: Education Records and Enrollment

(i) Unofficial or “Hand-Carried” Education Records

(A) If official education records cannot be released to the parents for transfer, the DoDEA custodian of the records, as the sending LEA shall provide to the parent a complete set of unofficial education records.

(B) Upon receipt of the unofficial education records, the DoDEA school, as the school in the receiving LEA shall enroll and appropriately place the child as quickly as possible based on the information in the unofficial records, pending validation by the official records.

(ii) Official Education Records or Transcripts

(A) The DoDEA school, acting as the receiving LEA shall request the child's official education record from the school in the sending State at the same time as DoDEA school enrolls and conditionally places the child.

(B) Upon receipt of the request for a child's records, the school in DoDEA, acting as the sending LEA will provide the child's official education records to the school in the receiving State, within 10 work days. If there is a designated school staff break, records will be provided as soon as possible; however, the time will not exceed 10 work days after the return of staff. DoDEA will initiate actions to meet these deadlines without violating the disclosure rules of the Privacy Act, 5 U.S.C. 552a.

(iii) Immunizations

(A) Parents have 30 days from the date of enrolling their child in a DoDEA school to have their child(ren) immunized in accordance with DoDEA's immunization requirements, as the receiving LEA.

(B) For a series of immunizations, parents must begin initial vaccinations of their child(ren) within 30 days.

(iv) Entrance Age

(A) At the time of transition and regardless of the age of the child, the DoDEA school, acting as the receiving LEA, shall enroll the transitioning child- at the -grade level - as the child's grade level (i.e. in kindergarten through grade 12) in the sending state's LEA.

(B) A child who has satisfactorily completed the prerequisite grade level in the sending state's LEA will be eligible for enrollment in the next higher grade level in DoDEA school, acting as the receiving LEA, regardless of the child's age.

(C) To be admitted to a school in the receiving State, the parent or guardian of a child transferring from a DoDEA (sending) LEA must provide:

(1) Official military orders showing the military member or the member's spouse was assigned to the sending State or commuting area of the State in which the child was previously enrolled.

If the child was residing with a guardian other than the military member during the previous enrollment, proof of guardianship (as specified in the Compact) should be provided by the parent or guardian to the receiving LEA or SEA to establish eligibility under the Compact.

(2) An official letter or transcript from the sending school authority that shows the student's record of attendance, academic information, and grade placement.

(3) Evidence of immunization against communicable diseases.

(4) Evidence of date of birth.

(2) Article V: Placement And Attendance

(i) Course Placement

(A) As long as the course is offered by DoDEA, as the receiving LEA, it shall honor placement of a transfer student in courses based on the child's placement or educational assessment in the sending State school.

(B) Course placement includes, but is not limited to, Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses.

(C) Continuing the child’s academic program from the previous school and promoting placement in academically and career challenging courses shall be a primary consideration when DoDEA considers the placement of a transferring child.

(D) DoDEA, acting as the receiving LEA, may perform subsequent evaluations to ensure the child’s appropriate course placement.

(ii) Educational Program Placement

(A) As long as the program is offered by DoDEA, acting as a receiving LEA, it will honor placement of the child in educational programs based on current educational assessments and placement in like programs in the sending State. Such programs include, but are not limited to, gifted and talented programs and English language learners.

(B) The receiving State school may perform subsequent evaluations to ensure the child’s appropriate educational program placement.

(iii) Special Education Services

(A) DoDEA, acting as the receiving LEA, will initially provide comparable services to a child with disabilities based on his or her current IEP in compliance with 20 U.S.C. chapter 33, also known and referred to in this part as the “Individuals with Disabilities Education Act (IDEA),” as amended, and the requirements of Executive Order 13160. DoDEA may perform subsequent evaluations to ensure the child’s appropriate placement consistent with IDEA.

(B) DoDEA, acting as the receiving LEA, will make reasonable accommodations and modifications to address the needs of incoming children with disabilities, in compliance with the requirements of 29 U.S.C. 794 and E.O. 13160, and subject to an existing 504 plan to provide the child with equal access to education.

(iv) Placement Flexibility. DoDEA's administrative officials must have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of DoDEA.

(v) Absences Related to Deployment Activities. A child whose parent or legal guardian is an active duty Service member and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting, will be granted additional excused absences under governing DoDEA rules.

(3) Article VI: Eligibility for Enrollment

(i) Eligibility in DoDEA Schools. Eligibility of dependents of military members is governed by the laws in 10 U.S.C. §2164 and their implementing regulations. Only children who are eligible to attend DoDEA schools may do so, regardless of their transition status.

(ii) Eligibility for Extracurricular Participation. DoDEA, acting as the receiving LEA, will facilitate the opportunity for transitioning children's inclusion in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

(4) Article VII: Graduation. To facilitate the child's on-time graduation, DoDEA will incorporate the following procedures:

(i) Waiver Requirements

(A) DoDEA administrative officials will waive specific courses required for graduation if similar course work has been satisfactorily completed in another LEA or provide reasonable justification for denial.

(B) If DoDEA, as a receiving LEA, does not grant a waiver to a child who would qualify to graduate from the sending school, DoDEA will provide an alternative means of acquiring required coursework so that graduation may occur on time.

(C) If DoDEA, as the receiving LEA, requires a graduation project, volunteer community service hours, or other DoDEA specific requirement, DoDEA may waive those requirements.

(ii) Exit Exams

(A) DoDEA, as a receiving LEA, must:

(1) Accept exit or end-of-course exams required for graduation from the sending State.

(2) Accept national norm-referenced achievement tests.

(3) Provide alternative testing in lieu of testing requirements for graduation in the receiving from a DoDEA school.

(B) If the alternatives in paragraph (b)(2)(i) of this section cannot be accommodated by DoDEA as the receiving LEA for a child transferring in his or her senior year, then the provisions of paragraph (b)(1)(iv)(C) of this section will apply.

(iii) Transfers During Senior Year

(A) If a child transferring at the beginning or during his or her senior year is ineligible to graduate from DoDEA, as the receiving LEA, after all alternatives have been considered, DoDEA will request a diploma from the sending LEA or SEA. DoDEA will ensure the receipt of a diploma from the sending LEA or SEA, if the child meets the graduation requirements of the sending LEA or SEA.

(B) If one of the States in question is not a member of this Compact, DoDEA, as a receiving state, will use best efforts to facilitate a transferring child's on-time graduation in accordance with paragraphs (b)(1)(iv)(A) and (b)(1)(iv)(B) of this section.

Dated: March 2, 2016.

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