



ISSUE BRIEF

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

BACKGROUND

The Interstate Compact on Educational Opportunity for Military Children became effective in August 2008 when the first 10 states formally adopted the agreements. Since then, the number of states that have joined the Compact has grown to 35: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin (as of September 2010).

The purpose of the Interstate Compact is to address perceived inequities facing schoolchildren of military parents when they are required to relocate across state lines. Specifically, it allows the laws of the “sending” state to apply to transferring students from military families in the schools of the “receiving” state for such policies as graduation requirements, Advance Placements (AP), and age of student enrollment. For example, if the “sending” state has a lower graduation requirement than the “receiving” state (e.g. course requirements), then, depending on the terms of the Interstate Compact, the requirements of the “sending” state would apply to a transferring high school student. The provisions would most likely have a more significant impact on public schools near military bases. However, all children of military families would be covered regardless of their proximity to military installations.

The Interstate Compact, after adoption by state legislatures, applies to the children of:

- Active duty members of the uniformed services, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C §1209 and 1211;
- Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement;
- Members of the uniformed services who die on active duty for a period of one year after death.

Additionally, some states have extended applicability to children of civilian employees of the Department of Defense as well.

The Interstate Compact addresses such issues as the eligibility, enrollment, placement and graduation requirements. For example, if the “sending” state has a lower graduation requirement than the “receiving” state (e.g. course requirements), then, depending on the terms of the Interstate Compact, the requirements of the “sending” state would apply to a transferring high school student. The provisions would most likely have a more significant impact on public schools near military bases that have students transferring from other states. However, all school children of military families would be covered, regardless of their proximity to military installations.

Interstate Compact Commission

The compact also established an independent compact operating authority, the Interstate Commission, which is authorized to address future interstate problems and issues as they arise. The Interstate Commission is authorized to create and enforce rules governing the compact's operation and promote training and compliance with the compact's requirements. The Interstate Compact Commission provides a formal venue for solving interstate issues and disputes.

The Commission, held its organizational meeting in the fall of 2008. A second meeting was held in November 2009, where new administrative rules were adopted. Included among the new rules is the cost to states of \$1 per eligible student, based on the number of children of active duty personnel formally announced by the Department of Defense each year.

The new rules also address a process for resolving disputes and controversies that include both mediation and arbitration, and identify a broad range of authorities and flexibilities extended to local school districts regarding enrollment eligibility, course placement, educational program placement, placement flexibility, absence related to deploying activities, and eligibility for enrollment. Of note, is that the rules grant authority and broad flexibility to local school districts regarding tuition waivers when non-custodial parents live in a different district than the parents, graduation requirements, course placement, educational placement, and extended absences related to deploying activities.

INTERSTATE COMPACT DEVELOPMENT

In October 2006, the Council of State Governments (CSG) established an Advisory Group comprised of representatives from 17 selected non-profit associations, and state and local agencies, including the National School Boards Association (NSBA). The task of the Advisory Group was to participate in discussions regarding concerns expressed by military families over perceived inequities facing schoolchildren of military parents when they were required to relocate across state lines – and to provide feedback regarding proposed actions by the CSG.

The Advisory Group examined the challenges encountered by military families, students and the educational system in addressing the unique needs of military children, and offered a set of recommendations as to what the final compact should entail. Although an existing concern of military families for many years, the problems became more intense with the significantly increased calls to active duty of military reservists. Clearly there is a growing concern within the Department of Defense that military families should receive relief from many of the state laws regarding eligibility, enrollment, placement and graduation requirements. Although the Advisory Group addressed the issues from a macro-level, a separate team was established to draft the compact. There was no formal approval or concurrence by NSBA regarding the Interstate Compact model language.

In January 2008, the Council of State Governments (CSG), in cooperation with the U.S. Department of Defense, Office of Personnel and Readiness, released a Legislative Resource Kit to assist local advocates in securing support from local and state officials for this new Interstate Compact (IC). The Legislative Resource Kit included Interstate Compact model language for adoption by the states which addressed key issues such as eligibility, enrollment, placement and graduation – encountered by military families who must relocate on a regular basis. The kit also proposed how these issues should be addressed, including enforcement and compliance mechanisms.

ISSUES FOR CONSIDERATION BY STATE LEGISLATURES PRIOR TO ADOPTION

NSBA believes that it is imperative that state legislatures and other key stakeholders fully understand the impact of Interstate Compact adoption on their own state laws. In taking legislative action on the Interstate Compact, state legislatures are encouraged to consider the following:

Interstate Compact Requirements

State Legislatures should be comfortable that the assessments on their states are reasonable and that the terms and conditions under which a particular state may be delinquent in payment are fully understood.

Additionally, each state legislature should determine how such assessments would be made, and which agency within the state would be administratively responsible for the payment.

Additionally, state legislatures should be aware that while there must be unanimous agreement among the states on amendments to the Interstate Compact, a member state cannot withdraw for all intent and purposes for a full year after the state formally notifies other state members of its intent to withdraw. In adopting the Compact, state legislatures should be clear regarding authority and implementation requirements during the one-year transition.

Further, state legislatures should understand that the Interstate Compact cannot be dissolved unless there is only one remaining member. State legislatures should assess any potential political implications as a “former” participant; particularly when a military family is re-located from a “participating state” to a “non-participating state.”

Finally, state legislatures should understand that the Interstate Compact rules provide for any unresolved controversy or disputes between or among participating states related to the Compact to be resolved by alternative dispute resolution processes including mediation and arbitration. The rules further provide that any costs for arbitration and attorney fees will be the responsibility of the party that does not prevail.

Implications for Other State Laws

There may be implications for other state laws including immunization, privacy laws specific to health records, enrollment ages, state powers of attorney, state finance formulas, graduations requirements, and state exit examinations. For example, if certain states have identified penalties for failure to follow certain state laws regarding the privacy, would the “receiving states” be subject to the same penalties even in the absence of similar penalties in the “receiving state”?

Additionally, many of the administrative requirements of the compact should be fully understood in terms of projected and actual costs. For example, all official records must be made available within ten days. State legislatures should be fully aware of their capacity to meet all Commission requirements.

STATE LEGISLATURE ADOPTION OF THE COMAPCT

Kansas and Kentucky were the first states to adopt the Interstate Compact. Although these two states had different experiences, there are some similarities. For example, both states have major military installations – and in those specific areas of the states, the local school districts have developed a very positive working relationship over the years in supporting the needs of these military families. In both states, the legislation moved through either military or military-related legislative committees rather than education committees.

Additionally, in both states their respective State Departments of Education were fully aware of the Interstate Compact model language and proposed state legislation, and had no substantive objections. As a result of the State Department of Education's support, it appears that other education groups throughout the state had a higher degree of comfort and did not perceive any adverse impact resulting from the legislation. Another shared perception in both states was that adoption of the compact would have little, if any, impact beyond those areas of the state with high concentrations of military families.

Another key point to note is that neither Kentucky nor Kansas has state graduation exit exams. Therefore, the potential concern of many states that newly arrived students would be permitted to graduate without complying with state graduation requirements; i.e., passing the exit exams, was not an issue. In both Kansas and Kentucky many key officials expressed the sentiment that whatever challenges may evolve can be addressed to the satisfaction of the military families. Some state legislatures have adopted the Compact with modifications. While permitted, full enforcement of provisions not specifically in the original Compact may not be enforceable by the Commission.

To monitor state legislative actions across the country regarding adoption of the Interstate Compact, go the following site: <http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx>.

NSBA POSITION

NSBA believes that states have the full authority for determining education policy and the framework for the delivery of educational services to its students, including entering into agreements with other states. While the compact is designed to address perceived inequities facing children of military families, in a highly mobile society such as ours, other families could also be affected.

Of broader concern is the use of an interstate compact to affect policy changes rather than to use the traditional federal legislative and regulatory process. While not illegal or impractical, this non-traditional approach to address federal education policy is unique and therefore requires greater explanation as to its effectiveness.

Additionally, NSBA has concerns as to whether the Commission will be able to address emerging issues in a timely manner. Therefore, NSBA recommends that the Interstate Compact Commission, in adopting its own policies and practices re-affirms that states have the final decision-making authority regarding any unresolved issues. NSBA participated in the first meeting of the Compact Commission in October 2008 in Arizona, and the second meeting in November 2009. NSBA will continue to monitor the implementation of the Compact and identify issues that are of specific concerns to local school districts.

Further, in adopting the compact NSBA encourages state legislatures to include additional clarification regarding the Interstate Commission's roles and responsibilities in order to preclude the appearance of a separate education agency for those states that have adopted the compact. Also, NSBA urges state legislatures to clarify the relationship between the commission, the state councils and the state boards of education.

To get more information on the commission, go to www.mic3.net.

For additional information, please contact Reginald M. Felton, director of federal relations at the National School Boards Association, at 703-838-6782, or by e-mail, rfelton@nsba.org.