

meaning as defined in section 3(10) of the Act.

(4) For purposes of this paragraph (h), the term “qualified political subdivision” means any governmental unit of a State, including a city, county, or similar governmental body, that—

(i) Has the authority, implicit or explicit, under State law to require employers’ participation in the program as described in paragraph (h)(1)(ix) of this section; and

(ii) At the time of the enactment of the political subdivision’s payroll deduction savings program:

(A) Has a population equal to or greater than the population of the least populated State (excluding the District of Columbia and territories listed in section 3(10) of the Act);

(B) Has no geographic overlap with any other political subdivision that has enacted a mandatory payroll deduction savings program for private-sector employees and is not located in a State that has enacted such a program statewide; and

(C) Has implemented and administers a plan, fund, or program that provides retirement income to its employees, or results in a deferral of income by its employees for periods extending to the termination of covered employment or beyond.

(5) For purposes of paragraph (h)(1)(iii) of this section, amounts withheld from an employee’s wages by the employer are deemed to be transmitted promptly if such amounts are transmitted to the program as of the earliest date on which such contributions can reasonably be segregated from the employer’s general assets, but in no event later than the last day of the month following the month in which such amounts would otherwise have been payable to the employee in cash.

Signed at Washington, DC, this 9th day of December, 2016.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 89

[Docket ID: DOD–2015–OS–0020]

RIN 0790–AJ33

### Interstate Compact on Educational Opportunity for Military Children

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

**ACTION:** Final rule.

**SUMMARY:** DoD is establishing policies to implement the Interstate Compact on Educational Opportunity for Military Children (referred to as the “Compact”) within the DoD, informed by the sense of Congress, and in furtherance of the operation of DoD schools. The final 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 (DoDEA) 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:** This rule is effective on January 19, 2017.

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

**SUPPLEMENTARY INFORMATION:** On March 7, 2016 (81 FR 11698–11706), the Department of Defense published a proposed rule titled Interstate Compact on Educational Opportunity for Military Children for a 60-day public comment period. The public comment period closed on May 6, 2016. Ten public comments were received. The preamble to this final rule addresses the comments. Due to one of the public comments received, the Department has revised the final rule to reflect that the Military Departments will nominate military representatives by position to act as liaisons to State Councils and the Deputy Assistant Secretary of Defense for Military Community and Family

Policy (DASD(MC&FP)) will designate them in this manner.

Edits were made to adjust the process established to designate DoD liaisons to State Councils, so that liaisons are designated by position rather than by individual.

As the result of further internal coordination, administrative edits were made to the regulatory text.

*Comment:* “This regulation is very beneficial for the States and as the DoD is to handle the majority of the cost, it has the promise of doing a great deal of good for the children of active duty military without being overly burdensome to the States participating. However, as the participation in the Compact is voluntary, it is possible that the degree of implementation will vary from state to state, perhaps by a large degree. This potential for variation would run against the purpose of the regulation. It is not always desirable to have penalties as part of a regulation, especially one that is voluntary, but without a clear idea of how the regulation would be enforced, the goals of the Compact may not be successful.”

*Response:* All fifty states and the District of Columbia (DC) have accepted the Compact into their state statutes. Consequently, complying with the provisions of the Compact is based on compliance with state law. Additionally, the Compact (approved by all fifty states and DC) includes the oversight of the Compact by a Commission composed of member states, with rules governing non-compliance and dispute resolution. Also, support for the administration of the Compact and the Commission is funded entirely by the member states without support from the federal government.

*Comment:* “This new policy will not only bring awareness to schools, but will open up a need for additional staff to require training and employment in the schools to assist these [military] families. This rule will also open doors for additional policy to be made and other services not being addressed to have priority in legislation in the upcoming years so that the military families can have less strain than they already do with having a parent serve our country.”

*Response:* The fifty states and DC enacted laws approving the Compact with the understanding that implementation of the Compact would not require additional staffing in schools. Additionally, since enactment of the Compact in the 50 states and DC between 2008 and 2014, there have not been additional policies or services to address educational needs of children in

military families. Instead, states have addressed other concerns, such as licensure and employment of military spouses.

*Comment:* “Since most moves occur during the summer months, in between school years, many of the challenges addressed by the proposed rule can be avoided with forethought and planning. For instance, every experienced military spouse knows to contact the gaining school system and/or base to gather as much enrollment information as possible and begin setting up a smooth transition. Required immunizations are dispensed at the base clinic, soccer registration forms and payment are mailed off, copies of IEP and special needs assessment tests are made. But what about things the family cannot control, such as high school prerequisites or differences in the number of required language courses a transferring high school student must take?”

*Response:* The focus of this rule is the implementation of the Compact provisions by DoDEA and facilitating the DoD liaison function on State Councils. With this said, the Compact provides broad policies to facilitate the transition of children in military families between schools. Forethought and planning can help families during these transitions, but there are elements of the transition process that the Compact addresses without requiring a school district to modify its educational standards.

*Comment:* “In the definition for the children of military families, number four should be revised. I believe that children of military members who are severely wounded, ill, injured, or die on active duty or as a result of injuries sustained on active duty need to have this designation for longer than one year. I suggest they keep this designation until June 30th of their normal graduation year. This ensures the child/children will have this support until they graduate.

*Similar Comment:* Eligibility needs to include recently separated (regardless of despoliation as it is not child’s fault for honorable, etc.) and retired/new retirement system??? soldiers (for more than 1 year and beyond “retire” as the military is looking to drastically change retirement in the next decade, not sure what those soldiers will be called. . . . thinking ahead here).”

*Response:* The suggested changes may be very worthwhile; however, the definitions included in this rule are the same as the definitions that have been enacted by the 50 states and DC, which have approved the Compact. Furthermore, the enrollment policies

governing DoDEA schools is governed by 20 U.S.C. 921–932 and 10 U.S.C. 2164.

*Comment:* “My high school split was awful after my dad retired between my sophomore and junior year. From KY to GA requirements. I was denied Calculus and French 3 due to GA requirements for freshmen PE & sophomore economics to graduate in their state. Guess taking Latin & biology & chemistry right off the bat in KY crowded out these GA requirements. Was such a joke to put a senior into a freshman class for a requirement not needed or looked favorably at for college transcripts. Would have been so much more streamlined if given a waiver and opt out of GA requirements to graduate.”

*Response:* The Compact allows for military families more flexibility to work with schools to accommodate requirements for the graduation of their children. Section 89.8(b)(4) outlines the provisions of Article VII of the Compact on graduation requirements.

*Comment:* “The pact should also provide guidance for both state-side and DoD schools to provide transition tutoring for military children transferring to new schools. States have different standards and teachers teach to different standards per their school districts. There are times when new military children transfer to a different school and they are considered “behind.” Not because they have a learning disability, but the part of the curriculum may not have been taught at the old school. If a tutoring program for possibly 90 days or more (if necessary) could be provided at no expense to the parents, this will allow transferring students time to learn any coursework they may not have been taught at their old schools. This will also make the transition less stressful on the kids.”

*Response:* Adding services, such as tutoring, to the Compact would require the member states and DC to amend their laws that implement the Compact. Since enactment of the Compact in the 50 states and DC between 2008 and 2014, there have not been additional policies or services to address educational needs of children in military families.

*Comment:* “Now that the Compact has been adopted by all 50 states and the District of Columbia, the next step must be to ensure each state has a functioning state council. These councils play an important role in raising awareness of the Compact among school districts, as well as answering questions and resolving conflicts. Although DoD cannot compel states to create and maintain state councils, it can and

should ensure each council has one or more military representatives. While we commend DoD for its thoughtful approach to identifying military representatives, we have concerns about some of the procedures outlined in the proposed rule. Under the proposed rule, each Service will be assigned several states and will be responsible for selecting the military representative to serve on those states’ councils. The military representative must be a military member or DoD civilian who can serve on the state council for two years. Given the transient nature of military life, we believe this places an undue burden on the Services, who will be required to identify a new representative each time an individual serving on a state council is reassigned to a new location. Rather than choosing an individual, we believe it makes more sense to formally attach the military representative role to a given position or billet. An assignment by billet would provide the state councils with the assurance the military representative role will be continuously occupied and reduce the burden on the Services.”<sup>1</sup>

*Response:* The Department agrees with the perspective of designating military representatives by position to act as liaisons. The Department has heard informally from others within the Military Interstate Children’s Compact Commission (MIC3) that designation by position would be the preferred approach. Consequently, the Department has revised the proposed rule and the DoD Instruction to reflect this change so that the Military Departments will nominate military representatives by position and the DASD(MC&FP) will designate them in this manner. These designations normally will remain in force until a State Commissioner requests a different position (or positions) be designated as the liaison to the State Council.

## Executive Summary

### I. Purpose of This Rulemaking

This final 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

<sup>1</sup> April 14, 2016 letter from the National Military Family Association, submitted as comment on DOD-2015-OS-0020-0001.

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 and DC have passed legislation to become members of the Compact, including most of those with large numbers of military residents. DoDEA cannot be a member of the Compact, but is complying with its provisions as a matter of policy 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 school transition in the following areas:

#### *Education Records and Enrollment*

The Compact asks school districts in member states to assist military families with the transfer of education records, additional time for immunization and continuity of enrollment in kindergarten and first grade:

- **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 it receives 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 for Enrollment*

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. The Compact requires cooperation in the following areas:

- **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. 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 that describe the implementation of the principles of the Compact within DoD, including DoDEA:

(1) 10 U.S.C. 2164—Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS). This law authorizes DoD to operate a school system within the United States for DoD dependents when it is determined that appropriate educational programs are not available through a local educational agency.

(2) 20 U.S.C.—Education, Chapter 25A—Overseas Defense Dependents' Education. This law authorizes DoD to operate a program to provide a free public education through secondary school for dependents in overseas areas. It is the statutory basis for the DoD Dependent Schools.

## III. Summary of the Major Focus Points of This Rulemaking

The major provisions of this regulatory action include designating military representatives as liaisons to State Councils of member states of the Compact, designating the DoD ex-officio member as a liaison to the Compact Commission (*i.e.*, the MIC3), 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 schools.

(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 describes how DoD may send an ex-officio liaison to the Commission meetings, and also describes how the DoD ex-officio member will participate as a liaison on

the Executive Committee of the Commission. This rule provides guidelines for the DoD ex-officio member (§ 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 final rule that 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 costs to the Department are summarized below:

- Military representative attending State Council meetings as a liaison. 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 \$569<sup>2</sup> in opportunity labor cost. Additionally, intrastate travel and per diem is expected to cost an approximate average of \$339.<sup>3</sup> States vary with regards to the number of military representatives they have requested to attend; however, the estimated number

<sup>2</sup> Cost estimated on the salary of a GS-14 step 5 without locality pay or percentage for benefits (average of \$47.39 per hour—2016 GS Pay Scale) times approximately 12 hours.

<sup>3</sup> Cost of travel calculated at an average round trip requiring 300 miles times the mileage rate of \$0.54 per mile (equals approximately \$162), plus per diem costs of \$142 per day, plus proportional meals and incidentals for the second day of \$35 (\$177). Unit rates based on Fiscal Year 2017 standard per diem rate for the Continental United States and 2016 GSA mileage rates.

of military representatives is 77.<sup>4</sup> Applying the approximate average costs per year provides \$43,810 in opportunity labor costs and \$26,100 in travel and per diem.

- *Identifying, nominating and designating a position to act as a liaison to a State Council.* DoD estimates approximately 180 hours<sup>5</sup> of administrative time to coordinate nominations for the first year, plus approximately 80 hours<sup>6</sup> to process, review, coordinate, sign and distribute the designation letters. The opportunity labor cost of coordination would be approximately \$7,220<sup>7</sup> and completing the designation letter, with accompanying documents, would be \$4,730<sup>8</sup> for the first year. Subsequent years would be approximately 20 percent of the time and cost associated with the first year (approximately \$1,440 for coordination and \$950 for completing designation letters).

- *Ex-officio member to the MIC3.* This individual participates as a liaison in the annual conference, executive committee meeting, and other standing committee meetings and would cost DoD approximately \$8,610 per year.<sup>9</sup>

Additionally, this final 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

<sup>4</sup> 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).

<sup>5</sup> 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. Estimate fulfilling requests from 40 states for the first year (designating approximately 60 positions).

<sup>6</sup> 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 40 letters of designation for the first year (some individuals will be included on the same designation letter).

<sup>7</sup> Cost estimated on the salary of a GS-13 step 5, without locality pay or percentage for benefits (\$40.10 per hour—2016 GS Pay Scale).

<sup>8</sup> Cost estimated on the salary of a GS-14 step 5 with locality pay for Washington, DC, but no percentage for benefits (\$59.13 per hour—2016 GS Pay Scale).

<sup>9</sup> 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 and no benefits included (\$69.56 per hour—2016 GS Pay Scale) times 72 hours (\$5,010), plus \$3,600 for travel and per diem (based on average cost for 20 similar 3-day temporary duty trips for 2015).

members of the Compact.<sup>10</sup> 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 implementation of this rule within DoDEA is expected to cost approximately \$3,310 per year<sup>11</sup> to administer and conduct meetings.

The benefits derived from DoD's participation in the Compact accrue to Service members and their families, particularly the 676,000 school-age children educated by local education agencies and DoDEA.<sup>12</sup> 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.<sup>13</sup> 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 the Council of State Governments, National Center for Interstate Compacts.<sup>14</sup> 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.<sup>15</sup>

#### 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

<sup>14</sup> 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.

<sup>15</sup> 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.

(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. It has been determined that this rule is not a significant regulatory action. The rule does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

*2 U.S.C. Ch. 25, "Unfunded Mandates Reform Act"*

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) 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. 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. Ch. 6)*

DoD 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

<sup>10</sup> 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.

<sup>11</sup> 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 and not including benefits (\$59.13 per hour—2016 GS Pay Scale); plus 8 hours of preparation time for the two meetings by a GS–14 step 5, with Washington, DC locality pay.

<sup>12</sup> 2014 Demographic Profile of the Military Community, DMDCC Active Duty Military Family File, page 137.

<sup>13</sup> Council of State Governments, "Interstate Compact on Educational Opportunity for Military Children Legislative Resource Kit," January 2008, page 1.

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 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 the sense of Congress as set forth in 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 DoD, 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; 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.

**DoDEA Committee.** A DoD committee established pursuant to this part by Director, 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.

**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 as a liaison to a State Council.* Incumbent of a position designated by the DASD(MC&FP), who performs 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 whose position 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)), the Office of the Assistant Secretary of the Navy for Manpower and Reserve Affairs (OASN(M&RA)), or the 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.* The formal and physical process of transferring from school to school; or 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 the sense of Congress as set forth in 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, by position, 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 education 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, 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 by position 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 serving as a liaison to 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 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>)



[www.dtic.mil/whs/directives/corres/pdf/134225p.pdf](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 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 by position, 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 by position to serve as liaisons 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 serve as a liaison 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 designated by position as Liaisons to State Councils.* In accordance with section 3–201 of DoD 5500.07–R, incumbents of positions designated as liaisons 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 Web sites, 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).

(b) *Nomination Process for Positions Designated as Liaisons to State Councils.* (1) In accordance with DoD 5500.07–R, liaison positions are nominated by the Military Departments and designated by the DASD(MC&FP), not by State officials. Depending on the number of liaison positions required by State policy, designating liaison positions to a State Council will be accomplished according to the processes outlined in Table 1:

TABLE 1—PROCESS FOR DESIGNATING LIAISON POSITIONS 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 incumbent of the position nominated 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 of designating the position which the individual encumbers. 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) 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 POSITION TO SERVE AS A LIAISON TO 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 Serving as a Liaison 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 Web sites, 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 (DoDDS—Europe, DoDDS—Pacific, and DDESS) 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 Executive Order 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 20 U.S.C. 921 through 932 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 requirements, 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: December 12, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2016-1049]

#### Drawbridge Operation Regulation; Pearl River, LA/MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the US 90 highway bridge (East Pearl