

history background check has been initiated but not yet completed, to perform duties under LOSS upon favorable findings of preliminary investigations.

(1) *No presumption of right.* No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check without authorizing policy or other written permission from a DoD Component head.

(2) *Preliminary investigations required.* No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check unless the following investigative elements have been reviewed and determined favorably:

(i) An IRC, including installation law enforcement records check, drug and alcohol records, and FAP records check for a minimum of 2 years before the date of the application if the individual has a preexisting DoD affiliation.

(ii) Initial results from the advanced FBI fingerprint criminal history background check (not the full check).

(3) *Exception for non-specified volunteers.* Due to the controlled, limited duration of an activity for these individuals, an advanced FBI fingerprint criminal history background check is not required. Non-specified volunteers will be permitted to perform duties and services under LOSS for the duration of the activity.

(4) *Supervisor requirements.* The supervisor must be a person who:

(i) Has undergone and successfully completed the required background check.

(ii) Has complied, as required, with the periodic reinvestigation requirement for a recurring criminal history background check.

(iii) Has not previously exhibited reckless disregard for an obligation to supervise an employee, contractor, or volunteer.

(5) *Video surveillance.* The use of video surveillance equipment to provide temporary oversight for individuals whose required background checks have been initiated but not completed is acceptable provided it is continuously monitored by an individual who has undergone and successfully completed all required background checks. This provision shall meet the intent of a flexible

and reasonable alternative for “direct sight supervision.”

(6) *Conspicuous identification of individuals subject to LOSS.* Individuals permitted to perform duties solely under LOSS must be conspicuously marked by means of distinctive clothing, badges, wristbands, or other visible and apparent markings. The purpose of such markings must be communicated to staff, customers, parents, and guardians by conspicuous posting or printed information.

(7) *Permissible performance of duties without supervision.* Individuals otherwise required to perform duties only under LOSS may perform duties without supervision if:

(i) Interaction with a child occurs in the presence of the child’s parent or guardian;

(ii) Interaction with children is in a medical facility, subject to supervisory policies of the facility, and in the presence of a mandated reporter of child abuse; or

(iii) Interaction is necessary to prevent death or serious harm to the child, and supervision is impractical or unfeasible (*e.g.*, response to a medical emergency, emergency evacuation of a child from a hazardous location).

PART 89—INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

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AUTHORITY: 10 U.S.C. 2164, 20 U.S.C. 921–932.

SOURCE: 81 FR 92659, Dec. 20, 2016, unless otherwise noted.

§ 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:

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(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>), 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 representa-

tive 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.* Eligi-

bility 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 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.

PART 93—ACCEPTANCE OF SERVICE OF PROCESS; RELEASE OF OFFICIAL INFORMATION IN LITIGATION; AND TESTIMONY BY NSA PERSONNEL AS WITNESSES

Sec.

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AUTHORITY: E.O. 12333, 3 CFR, 1981 Comp., p. 200; 50 U.S.C. apps. 401, 402.

SOURCE: 56 FR 51328, Oct. 11, 1991, unless otherwise noted.

§ 93.1 References.

(a) DoD Directive 5405.2,¹ "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985, reprinted in 32 CFR part 97.

(b) E.O. 12333, United States Intelligence Activities, 3 CFR, 1981 Comp., p. 200, reprinted in 50 U.S.C. app. 401.

(c) The National Security Agency Act of 1959, Public Law No. 86-36, as amended, 50 U.S.C. app. 402.

(d) Rule 4, Federal Rules of Civil Procedure.

(e) DoD Instruction 7230.7,² "User Charges", January 29, 1985.

(f) 28 CFR 50.15.

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

²See footnote 1 to § 93.1(a).

§ 93.2 Purpose and applicability.

(a) This part implements § 93.1(a) in the National Security Agency/Central Security Service including all field sites (hereinafter referred to collectively as NSA). The procedures herein are also promulgated pursuant to the NSA's independent authority, under § 1.12(b)(10) of E.O. 12333 referenced under § 93.1(b), to protect the security of its activities, information and employees. This part establishes policy, assigns responsibilities, and prescribes mandatory procedures for service of process at NSA and for the release of official information in litigation by NSA personnel, through testimony or otherwise.

(b) This part is intended only to provide guidance for the internal operation of the NSA and does not create any right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Defense, or NSA. This part does not override the statutory privilege against the disclosure of the organization or any function of the NSA, of any information with respect to the activities thereof, or of the names, titles, salaries, or numbers of the persons employed by the NSA. See section 6(a) of the DoD Directive referenced under § 93.1(a).

§ 93.3 Definitions.

(a) *Service of process.* Refers to the delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the manner prescribed by § 93.1(d), to an officer or agency of the United States named in court or administrative proceedings.

(b) *Demand.* Refers to the delivery of a subpoena, order, or other directive of a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official information, or for the appearance and testimony of NSA personnel as witnesses.

(c) *NSA personnel.* (or NSA person) Includes present and former civilian employees of NSA (including non-appropriated fund activity employees), and present and former military personnel assigned to NSA. NSA personnel also