

Testimony of Rick Masters, General Counsel for Interstate Commission on Educational Opportunity for Military Children

IN RE: HB 4

LATE TESTIMONY

February 2, 2011

Honorable Chair and Members of the Committee, I am Rick Masters, and I currently hold the position of General Counsel for the Interstate Commission on Educational Opportunity for Military Children which is the authorized governing body for the Interstate Compact on Educational Opportunity for Military Children of which Hawaii and thirty-four (34) other states are members. I received my Juris Doctorate from the Brandeis School of Law of the University of Louisville and I am licensed to practice law in the Commonwealth of Kentucky as well as both of its U.S. District Courts, I am also admitted to practice before the U.S. Courts of Appeals for the 4th 6th and 10th Circuits as well as the District of Columbia Circuit and the United States Supreme Court. I was formerly an Assistant Attorney General for the Commonwealth of Kentucky and also served as General Counsel for the Council of State Governments where I have continued to act as Special Counsel for Interstate Compacts for the last ten (10) years.

I am also the primary drafter of a number of national compacts including the Interstate Compact for Adult Offender Supervision, which has been adopted by all 50 states, D.C., Puerto Rico, and the U.S. Virgin Islands and the Interstate Compact for Juveniles, the Interstate Compact for the Placement of Children and the Interstate Compact on Educational Opportunity for Military Children which is the basis for the reauthorization of this Hawaii statute contained in HB 4.

I have provided legal advice to a number of existing compact commissions and have litigated court cases concerning disputes in which interstate compact provisions have been at issue in a number of U.S. District Courts and U.S. Courts of Appeals and in state courts. In addition I am a co-author of a book on the subject of interstate compacts published by the American Bar Association in 2007 containing the largest compilation of legal authorities and case citations ever printed on the subject.

This purpose of the compact is to address problems encountered by children in grades K-12 who must transfer from one state public school district to another because one or both parents are active duty members of the U.S. military including members of the guard and reserves who are activated or deployed.

To give input into the drafting process **stakeholders involved in public school education in this country served as an advisory group which directed the work of the drafting team. *These groups included The National School Boards Association, The National Association of State Boards of Education, the National Education Association, The National Association of Elementary School Principals, The National PTA, The Military Impacted Schools Association, and the Education Commission of the States.***

In order to provide the desired uniformity to facilitate the transfer of these students from one state to another a compact mechanism is employed which became effective upon the enactment of the compact by ten (10) states in 2008 and since that time twenty-five (25) additional states have joined the compact, including Hawaii, for a total of thirty-five (35) states. Since January of this year the compact legislation has also been introduced in North Dakota, Montana, and West Virginia, with proposed legislation pending in New York and Pennsylvania and a number of the other non-member jurisdictions expected to introduce the legislation this year.

Interstate compacts are a time tested and court tested means of resolving interstate problems which are authorized under Article I, Section 10, Clause 3 of the U.S. Constitution. In our country's 225 year history some 200 compacts have been adopted of which Hawaii is a member of approximately 15 interstate compacts including three (3) compacts pertaining to education.

Interstate compacts have been used for three primary purposes: 1) boundary disputes between states; 2) management of environmental resources; 3) regulatory compacts which apply to a wide variety of multi-state problems including transportation, insurance regulation, taxation, interstate placement of foster and adopted children, criminal justice and corrections matters such as the transfer of adult offenders across state lines and education.

Compacts allow the states to exercise collective control over matters which are traditionally regulated by the states without surrendering state control to the federal government. Interstate compacts allow the states to avoid the problem of 'fifty (50) different sets of rules' with which to solve interstate problems through a uniform approach while still subject to joint state authority.

This Compact seeks to facilitate equal educational opportunity for the children of military members in four (4) major areas: 1) Enrollment; 2) Eligibility; 3) Placement; and 4) Graduation. For example:

Enrollment

To facilitate the enrollment of a transferred child the Compact provides that the receiving state school will accept a copy of the educational record from the parent if no "certified record" is available and gives the sending state ten (10) days after receipt of the request from the receiving state school to transfer the "official" record.

Eligibility

The compact recognizes that children of deployed military members should be provided with a reasonable opportunity to be included in extracurricular activities in the event of a missed tryout or induction process if the student is otherwise qualified.

Placement

Under the Compact there is a presumption that the sending state's placement was correct and the transferred student will be continued in that placement if the receiving state offers equivalent courses. However the receiving state may subsequently conduct its own testing of the student and reevaluate & change such placement on that basis after the student has transferred to the new school district. The Compact also recognizes the special education services already required under federal law through IDEA, ICP and ADA. The compact allows some flexibility for deployment related absences.

Graduation

The Compact provides that the states will make reasonable efforts to accommodate the transfer of equivalent courses to facilitate on time graduation including consideration of alternative exit exam requirement being met if the student has successfully completed another national norm-referenced achievement test for those students approaching graduation. If the foregoing steps are not reasonably possible, as an alternative the receiving state will cooperate with the sending state in order to facilitate graduation in the sending state.

In summary, the compact attempts to establish a 'common denominator' among the member states which will remove existing barriers to timely completion of the public education process for these students who by virtue of the decision and commitment of their parent to serve our country are, in many cases, being unfairly penalized.

After reviewing the proposed bill contained in H.B. 4, I recommend that Article V, Section (a) regarding Course placement be amended to **delete** the language on page 11, line 22, beginning with the words "If space is limited . . ." and ending on page 12, line 5 with the words ". . . or on-line courses." The reason for this recommendation is that the current language in the proposed bill is much more specific and directive than the original language in the 'model draft' and apparently resulted from a misunderstanding regarding this section of the bill. For the same reasons, in the same section of the bill, on page 12, at line 9, the phrase "in a timely manner" can also be deleted.

In addition it is my understanding that the Hawaii State Council on Educational Opportunity for Military Children has recommended that an amendment to Article V, Section (a) be added on page 12, at line 14 at the end of the sentence ending with the word "course" that the following be added: "The receiving school may allow the student to attend similar educational courses within the school district if the receiving school does not offer such educational courses."

Similar language is recommended by amending Article V, Section (b) on page 13, at line 3 at the end of the sentence ending with the word "student" to add the following: "The receiving school may allow the student to attend similar educational courses within the school district if the receiving school does not offer such educational programs."

In my opinion and based upon my training and experience in the field of compact law and my specific knowledge of and involvement in the drafting of this specific compact, the above proposed amendments do not substantially deviate from the material provisions of the interstate compact statutes enacted by the current member states which are signatories to this compact.

Thank you for the opportunity to address the Committee about this important public policy matter and I will be happy to respond to any questions.