

ACT 152

S.B. NO. 1164

A Bill for an Act Relating to Interstate Compact on Educational Opportunity
for Military Children.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new
chapter to be appropriately designated and to read as follows:

**“CHAPTER
INTERSTATE COMPACT ON EDUCATIONAL
OPPORTUNITY FOR MILITARY CHILDREN**

§ -1 **Enactment of compact.** The interstate compact on educational opportunity for military children is hereby enacted into law and entered into by the State of Hawaii as a party, and is in full force and effect between the State and any other state joining therein in accordance with the terms of the compact, which compact is substantially as follows:

**ARTICLE I
PURPOSE**

The purpose of this compact is to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

- (1) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements;
- (2) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;
- (3) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;
- (4) Facilitating the on-time graduation of children of military families;
- (5) Providing for the adoption and enforcement of administrative rules implementing the provisions of this compact;
- (6) Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;
- (7) Promoting coordination between this compact and other compacts affecting military children; and
- (8) Promoting flexibility and cooperation between the educational system, parents, and the student to achieve educational success for the student.

**ARTICLE II
DEFINITIONS**

As used in this compact, unless the context clearly requires a different construction:

“Active duty” means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A).

“Appropriate education agency” means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

“Children of military families” means school-aged children, enrolled in kindergarten through twelfth grade, in the households of active duty members.

“Compact” means the interstate compact on educational opportunity for military children.

“Compact commissioner” means the voting representative of each compacting state appointed pursuant to article VIII of this compact.

"Deployment" means the period of one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

"Education records" means those official records, files, and data directly related to a student and maintained by the school or appropriate education agency, including records encompassing all the material kept in the student'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.

"Extracurricular activities" means a voluntary activity sponsored by the school or appropriate education agency or an organization sanctioned by the appropriate education agency. Extracurricular activities include preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

"Interstate commission on educational opportunity for military children" or "interstate commission" means the commission that is created under article IX of this compact.

"Local education agency" means a public authority legally constituted by a state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

"Member state" means a state that has enacted this compact.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory. The term shall not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Non-member state" means a state that has not enacted this compact.

"Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

"Rule" means a written statement by the interstate commission promulgated pursuant to article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

"Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other United States territory.

"Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

"Student financial obligation" means any unpaid or outstanding fines or fees.

"Test period" means the date(s) in which schools are conducting testing, assessments, or both, that are required by federal or state laws.

“Transition” means the formal and physical process of transferring from school to school, or the period of time in which a student moves from one school in the sending state to another school in the receiving state.

“Uniformed service” means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

“Veteran” means a person who served in the uniformed services and who was discharged or released therefrom under honorable conditions.

ARTICLE III APPLICABILITY

(a) Except as otherwise provided in subsection (b), this compact shall apply to the children of:

- (1) Active duty members of the uniformed services as defined in this compact, including members of the national guard and military reserves on active duty orders pursuant to 10 United States Code Section 101(d)(1) and Section 101(d)(6)(A);
- (2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired, for a period of one year after medical discharge or retirement; and
- (3) Members of the uniformed services who die while on active duty or as a result of injuries sustained while on active duty, for a period of one year after death.

(b) This interstate compact shall only apply to appropriate education agencies as defined in this compact.

(c) The provisions of this compact shall not apply to the children of:

- (1) Inactive members of the national guard and military reserves;
- (2) Members of the uniformed services now retired, except as provided in subsection (a);
- (3) Veterans of the uniformed services, except as provided in subsection (a); and
- (4) Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV EDUCATIONAL RECORDS AND ENROLLMENT

(a) Unofficial or “hand-carried” education records. If official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial education records containing uniform information as determined by the interstate commission. The unofficial education records shall only be furnished to the parents if all student financial obligations have been met. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

(b) Official education records and transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student’s official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the interstate commission. The official education records

shall only be furnished to the parents if all student financial and school obligations have been met.

(c) Immunizations. Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations shall be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission. This section shall not prohibit state department of health requirements concerning tuberculosis examinations.

(d) Kindergarten and first grade entrance age. Students may continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from an appropriate education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the appropriate education agency in the sending state shall be eligible for enrollment in the next higher grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V PLACEMENT AND ATTENDANCE

(a) Course placement. If the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered or both; provided that these programs exist in the receiving state school and space is available as determined by the principal. Course placement includes honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

(b) Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation and placement in like programs in the sending state; provided that these programs exist in the receiving state school and space is available as determined by the principal. The programs include gifted and talented programs and English as a second language programs. This subsection shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(c) Special education services.

- (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.
- (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the

receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This paragraph shall not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(d) Placement flexibility. Appropriate education agency administrative officials shall have flexibility in waiving a course or program prerequisites, or other precondition for placement in courses or programs offered under the jurisdiction of the appropriate education agency.

(e) Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the appropriate education agency superintendent to visit with the student's parent or legal guardian relative to such leave or deployment of the parent or guardian. This subsection shall not require excused absences to be granted during test periods.

ARTICLE VI ELIGIBILITY

- (a) Eligibility for enrollment.
- (1) Special power of attorney, relating to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.
- (2) The appropriate education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.
- (3) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was permanently enrolled while residing with the custodial parent. Upon the return of the custodial parent, the child shall be allowed to finish the school year in the school currently enrolled, but shall enroll in the school within the jurisdiction of the custodial parent during the following school year.

(b) Eligibility for extracurricular participation. State education agencies and appropriate education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified and space is available in the receiving state school as determined by the principal.

ARTICLE VII GRADUATION

To facilitate the on-time graduation of children of military families, state and appropriate education agencies shall incorporate the following procedures:

- (1) Waiver requirements. Appropriate education agency administrative officials may waive specific courses required for graduation if similar coursework has been satisfactorily completed in another appropriate education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the appropriate education agency

shall provide an alternative means of acquiring required coursework so that graduation may occur on time. This section shall not obligate the school or appropriate education agency to pay for an online course if funding is unavailable.

- (2) Exit exams. For students entering high school in the eleventh or twelfth grade, states shall accept:
 - (A) Exit or end-of-course exams required for graduation from the sending state;
 - (B) National norm-referenced achievement tests; or
 - (C) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

If subparagraphs (A), (B), and (C) cannot be accommodated by the receiving state for a student transferring in student's senior year, then paragraph (3) shall apply.

- (3) Transfers during senior year. If a military student transferring at the beginning or during the senior year is ineligible to graduate from the receiving appropriate education agency after all alternatives have been considered, the sending and receiving appropriate education agencies shall ensure the receipt of a diploma from the sending appropriate education agency, if the student meets the graduation requirements of the sending appropriate education agency. If one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with paragraphs (1) and (2) of this article. This paragraph permits but shall not require a sending state to deny a diploma to a student transferring to a receiving state with an exit exam requirement if the student does not meet the graduation requirements of the appropriate education agency of the sending state.

ARTICLE VIII STATE COORDINATION

(a) Each member state, through the creation of a state council or use of an existing body or board, shall provide for the coordination among its agencies of government, appropriate education agencies, and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its state council, its membership shall include at least the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent appropriate education agencies on the state council.

(b) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(c) The compact commissioner responsible for the administration and management of the state's participation in the compact shall be recommended by the superintendent of education with the approval of the board of education.

(d) The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

**ARTICLE IX
INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY
FOR MILITARY CHILDREN**

(a) The member states hereby create the "interstate commission on educational opportunity for military children". The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

- (1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;
- (2) Consist of one interstate commission voting representative from each member state who shall be that state's compact commissioner.
 - (A) Each member state represented at a meeting of the interstate commission is entitled to one vote.
 - (B) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.
 - (C) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.
 - (D) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication;
- (3) Include ex-officio, non-voting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include members of the representative organizations of military family advocates, appropriate education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;
- (4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;
- (5) Establish an executive committee, whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee;

- (6) Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.
- (b) Public notice shall be given by the interstate commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:
 - (1) Relate solely to the interstate commission's internal personnel practices and procedures;
 - (2) Disclose matters specifically exempted from disclosure by federal and state statute;
 - (3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
 - (4) Involve accusing a person of a crime, or formally censuring a person;
 - (5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (6) Disclose investigative records compiled for law enforcement purposes; or
 - (7) Specifically relate to the interstate commission's participation in a civil action or other legal proceeding.
- (c) For a meeting, or portion of a meeting, closed pursuant to subsection (b), the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of roll call votes. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.
- (d) The interstate commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting, as is reasonably possible, shall conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.
- (e) The interstate commission shall create a process that permits military officials, education officials, and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or appropriate education agency. This section shall not be construed to create a private right of action against the interstate commission, any member state, or any state education agency or appropriate education agency.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

- (1) To provide for dispute resolution among member states;

- (2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;
- (3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;
- (4) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, use all necessary and proper means, including the use of judicial process. Any action to enforce compliance with the compact provisions by the interstate commission shall be brought against a member state only;
- (5) To establish and maintain offices which shall be located within one or more of the member states;
- (6) To purchase and maintain insurance and bonds;
- (7) To borrow, accept, hire, or contract for services of personnel;
- (8) To establish and appoint committees including an executive committee as required by article IX, subsection (a), paragraph (5), which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
- (9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of it;
- (11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) To establish a budget and make expenditures;
- (14) To adopt a seal and bylaws governing the management and operation of the interstate commission;
- (15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preceding year. The reports shall include any recommendations that may have been adopted by the interstate commission;
- (16) To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;
- (17) To establish uniform standards for the reporting, collecting, and exchanging of data;
- (18) To maintain corporate books and records in accordance with the bylaws;
- (19) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and
- (20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) The interstate commission, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact including:

- (1) Establishing the fiscal year of the interstate commission;
- (2) Establishing an executive committee and such other committees as may be necessary;
- (3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;
- (5) Establishing the titles and responsibilities of the officers and staff of the interstate commission;
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and
- (7) Providing "start up" rules for the initial administration of the compact.

(b) The interstate commission, by a majority of the members, shall elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs incurred by them in the performance of their responsibilities as officers of the interstate commission.

(c) The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

- (1) Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;
- (2) Overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
- (3) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the interstate commission.

(d) The executive committee, subject to the approval of the interstate commission, may appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

(e) The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity,

for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person.

- (l) The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person.
- (2) The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.
- (3) To the extent not covered by the state involved, a member state, the interstate commission, or the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.
- (f) The compact commissioner and any person representing the state in the interstate commission, in their individual or official capacity, and the member state, shall be immune from suit and liability caused by or arising out of actions, errors, or omissions of the interstate commission.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate reasonable rules to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact,

then the action by the interstate commission shall be invalid and have no force or effect.

(b) Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act of 1981, as may be appropriate to the operations of the interstate commission.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

(d) If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt this compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(a) Oversight.

(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules adopted hereunder shall have the force and effect of law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, this compact, or promulgated rules.

(b) Default, technical assistance, suspension, and termination. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default shall not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted.

Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(f) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(g) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(h) Dispute resolution.

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution for disputes as appropriate.

(i) Enforcement.

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of this compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

(a) The interstate commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate rules binding upon all member states.

(c) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

(a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

(a) Withdrawal.

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) Dissolution of compact.

- (1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.
- (2) Upon the dissolution of this compact, the compact becomes void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII SEVERABILITY AND CONSTRUCTION

- (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.
- (b) The provisions of this compact shall be liberally construed to effectuate its purposes.
- (c) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII BINDING EFFECT OF COMPACT AND OTHER LAWS

- (a) Other laws.
- (1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.
- (2) All member states' laws conflicting with this compact shall be superseded to the extent of the conflict.
- (b) Binding effect of the compact.
- (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, shall be binding upon the member states.
- (2) All agreements between the interstate commission and the member states shall be binding in accordance with their terms.
- (3) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

§ -2 State council. There is established within the board of education for administrative purposes the state council on educational opportunity for military children. The board of education shall establish the state council, as required by article VIII of the compact. The membership of the state council shall include, at a minimum:

- (1) The superintendent of education or the superintendent's designee;
- (2) The complex area superintendents of the administrative districts that contain the Leilehua, Radford/Moanalua, and Kalaheo school complexes;
- (3) A complex area superintendent from the Leeward district;
- (4) The military liaison from the department of education;
- (5) A military representative from the United States Pacific Command;
- (6) One installation-level representative from each branch of service of the Air Force, Army, Marine Corps, Navy, and Coast Guard;
- (7) A representative of the executive branch of government;
- (8) The chairperson of the senate education committee or the chairperson's designee;

- (9) The chairperson of the house education committee or the chairperson's designee; and
- (10) Other offices and stakeholder groups the state council deems necessary.

Members of the state council may delegate voting authority to another person for a specified meeting or meetings. The state council shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

The council shall establish policies and procedures governing its operations but subject to the open meeting requirements of chapter 92.

§ -3 Appointment of compact commissioner. As required by article VIII of the compact, the state superintendent of education shall recommend, with approval of the board of education, the compact commissioner, who shall be responsible for the administration and management of the State's participation in the compact."

SECTION 2. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2011.

(Approved June 25, 2009.)