



**Testimony of the Pennsylvania School Boards Association Regarding
Proposed Interstate Compact on Educational Opportunity for Military Children**

September 18, 2008

I am Stuart Knade, Assistant Executive Director for Legal Services and Chief Counsel of the Pennsylvania School Boards Association. I would like to thank the committee chairpersons for giving PSBA and me the opportunity to testify today on House Bill 2518, which authorizes the Governor to execute a compact with other states to facilitate the school enrollment and placement of children of active-duty military parents. Although I do not and cannot speak on behalf of the Department of Defense or the Army, my perspective and comments are informed by my more than 28 years of military service both on active duty and in the Army Reserve, and the opportunity that has given me to assist thousands of soldiers in legal matters affecting their families.

I would like to first note that the Pennsylvania School Boards Association greatly respects the special sacrifices made by military personnel and their families. Like many people in this room, the PSBA board of directors and school board members everywhere have loved ones and friends serving our country and making those sacrifices. They tell me about them, and we share stories. My family and I have received tremendous support from PSBA during my previous mobilization in 2003-2004, and again now, as I prepare for a deployment scheduled to begin next month.

In keeping with this respect, Pennsylvania's school districts have a clear track record of going to extra lengths to accommodate military families. Our communications with districts around the Commonwealth that host active-duty military installations have revealed no evidence

of problems in the areas that the compact proposes to address. Our districts have been successful at handling military transfers for several reasons, including the flexibility of local district practices to help smooth a transfer student's adjustment.

It is also worth noting that only a relatively small number of full-time armed forces service persons are stationed in Pennsylvania (2,979 representing only 0.3% of the total military personnel stationed domestically in 2006), serving at 11 small active-duty military installations throughout the Commonwealth. Administrators in districts hosting those installations are experienced in working with transferring military families, and as you have heard, Pennsylvania school districts such as South Middleton, Cumberland Valley, Carlisle and Big Spring already have existing local voluntary agreements to ease the transition for military students.

PSBA applauds the worthy intentions behind the compact, but we question whether it is something that is needed for Pennsylvania. The absence of acute problems in this area in our Commonwealth reflects the fact that most or all goals of the compact are already being furthered by existing state law and regulations, and to the extent falling short, could be accomplished by minor tweaks in those domestic state provisions. (In light of this we can't help being just a bit offended that the language of the proposed compact suggests that we are "imposing" barriers upon the enrollment and academic success of children of military members. See, Article I, page 2, line 6.)

We see serious substantive drafting flaws in the compact language that impede its desired effect and create ambiguity and potential for litigation. These flaws include erroneous references to federal statutes defining categories of active duty, potentially omitted coverage of "Active Guard and Reserve" ("AGR") personnel, exclusion of military children temporarily living elsewhere from their parents household, and the potential to create inconsistency with special

education laws. In short, the flaws in the language of the compact mean that it fails to provide adequate protection to some categories of service personnel most relevant to Pennsylvania, that it may be overly broad about coverage of other categories, and that it establishes standards that could override existing requirements of both state and federal law beyond what is necessary to address the particular needs it aims to accommodate. I would be glad to outline the particulars of these drafting concerns with appropriate committee staff.

The understandable temptation for each adopting state is to try to fix such problems in its own adopting legislation, and try to tailor the legislation to better serve its interests, as North Carolina has done in several significant respects with this proposed compact. But that raises the question of whether when you do that you actually have entered the compact. An interstate compact is an interesting animal. The contractual premise, as explained by the resource material provided by the Council of State Governments, is that all participating states will adopt an authorizing statute with identical language, and thus “accept” the “contract” offered by the first adopting state. In theory, if you vary the terms, there is no compact.

Even more interesting is that a compact by its own terms surrenders part of the state’s sovereignty to a contractually-created regime, which in this case gives an appointed commission authority to make regulations we have so far never seen that would trump even statutes enacted by our General Assembly, a body that could sue us for damages if we don’t comply. We need to be always mindful of our Pennsylvania constitutional provisions prohibiting the delegation of legislative or municipal functions to special commissions or other non-elected tribunals. This compact also would obligate Pennsylvania to contribute funding for the compact’s administration, in an unknown amount to be determined by the compact’s commission.

While compacts do have their place in appropriate circumstances to address certain needs, PSBA questions whether this issue presents such a circumstance. The interstate compact approach should be reserved for those things that cannot be effectively addressed within a state's own laws and regulations. Compacts creating and operating interstate bridge, transportation or port authorities are a fine example. But is there anything about the needs this compact aims to address that Pennsylvania could not accomplish by carefully reviewing its own statutes and regulations and tweaking them if that review reveals unnecessary obstacles? PSBA suggests that there is not. What do Pennsylvania or its military families gain from the compact above and beyond what our normal regulatory and legislative process has done or could do?

And consequently, is it then really necessary or a good idea in this situation to cede the Commonwealth's sovereignty to a non-elected interstate body that would not be required to operate in the sunshine or make its records available as any other Pennsylvania government entity must, and yet would have the power to make regulations superseding actions of the General Assembly?

Put another way, PSBA urges you to consider first that Pennsylvania has already done a better job on its own of serving the educational interests of military families than the compact suggests has been the case in other states. This is a tradition in our state, exemplified by the provision in Section 1302 of our School Code added nearly half a century ago, expressly giving resident attendance rights to children of military families living on exclusively federal military enclaves, voluntarily going above and beyond any federally imposed requirement.

Second, to the extent anything more is needed in our Commonwealth, PSBA believes that Pennsylvania could do a more effective job of addressing those needs on its own, without the distractions, limitations, potential conflicts of law and funding obligations that would come along

with compact membership. And third, if the compact offers our resident military families more favorable treatment when present in other states than what those states might otherwise have provided, they will enjoy such treatment whether or not Pennsylvania is a member.

It is reasons such as these that this particular compact has not been well-received in every state. While ten states, including Delaware, Kentucky and North Carolina, have adopted it, a number of others have also raised serious questions regarding the need for the compact and its implications on local and state education policies. For instance, the Governor of Georgia vetoed the bill his state legislature passed because he believed the proposed compact “represents an abdication and unconstitutional binding of the Legislature’s powers of appropriations.” In New Hampshire and Mississippi, the proposal died in the legislature. As noted before, North Carolina’s legislature made significant alterations to the compact language that call into question the validity of that state’s adoption of it.

And, has there been sufficient review to date of the potential impact of the compact on the various provisions of our School Code, State Board of Education regulations, Department of Health regulations, and on local school district policies? Do we yet have a handle on all the respects in which those domestically adopted provisions would be altered by the compact or the potential regulations the compact’s commission could promulgate? To what extent might the language of the compact, rather than simply leveling the playing field, potentially set up greater entitlements that could create disadvantages for other students? To give an example of this last concern, might the compact require a school to reopen auditions for an annual musical show weeks after rehearsals have begun and parts have been assigned? Similarly, what are the health dangers presented by the enrollment and admission of new military family students without the

immunizations required before every other new student moving into a school district can enter a classroom?

Before moving any further towards adopting the compact, Pennsylvania needs to conduct a thorough and detailed review of existing provisions of law, of the potential impact of the compact on those provisions and actual practices within the Commonwealth, and of the benefits of existing local policies and practices that the evidence already available indicates are effectively meeting the needs of military families. Before ceding a significant aspect of our sovereignty to an interstate commission in an area traditionally the exclusive province of state regulation, it is critical that we know the exact extent of what we are ceding. PSBA urges the creation of a task force for this purpose, to which PSBA would be glad to contribute expertise.

PSBA is confident however, that the findings and recommendations of such a task force would reveal first that transition of military children in and out of Pennsylvania schools and associated issues such as transfer of records, credit for previous work and timely graduation have not been significant problem areas to date; and second, that to the extent our laws, regulations or local policies present any unfair disadvantages for military families, they can be easily addressed within our existing legal frameworks, without need to shackle Pennsylvania to a generic solution devised to address problems mainly existing elsewhere. At the very least, such a task force would be in a better position to identify the various areas in which the compact language should be modified if adopted to ensure it accomplishes its purposes without creating unnecessary problems.

PSBA thanks the committees for this opportunity to share our perspective on this important issue. I would be happy to try to answer any questions the committee members may have for me at this time.