



THE NEW INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ADMINISTRATION & GOVERNING STRUCTURE

An analysis of the current compact and its regulations show very little detail as to the issue of governance and national administration. This is not surprising given the spirit of the original compact and the reciprocal nature in which it was intended to operate. However, after lengthy work by both the AAICPC Membership Advisory Task Force and the DDT team over the course of two meetings and various subcommittee sessions, it has become apparent that an officially sanctioned governing body will be necessary under the new ICPC to ensure accountability, training, compliance, enforcement, rulemaking, information gathering and sharing and overall staffing in order to make the new agreement a success.

The current compact lacks detail of administrative issues and focuses almost exclusively on issues that should be referred to the rules. For the most part, the rules as written address proper issue areas, although more detailed areas will likely be required. The current articles of organization read like a combination of compact, rules and bylaws. While we will not make reference here to the articles of organization, they should be referenced when considering certain compact provisions, i.e. purpose and finance and certainly when examining rules and developing new bylaws.

When developing the overall ICPC interstate mechanism revision, look at it as a human body - the compact itself is the skeleton, the rules are the muscles and the bylaws are the skin. The compact should contain the minimum basics upon which the compact needs to operate, both in terms of the agreement between states and the operation of a governing body. The compact does not need to address every conceivable eventuality, nor should it. Its purpose is to provide the framework upon which to build. The rules are the actuators of the compact, containing the details of state interaction, how transfers will occur, what standards and practices will be followed, forms used, timelines established, etc. By using the compact as the broad framework, the rules can be adapted and adjusted as needed throughout the life the compact without the need to go back each time for legislative approval from the member states. Finally, the bylaws of the governing body detail how business will be conducted in a timely and orderly manner without unraveling.

Existing Administrative & Governing Structure language:

Original Compact

“Article VII, Compact Administrator - The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.”

Article VII sets forth the requirement of each state to designate an official representative who is not only the general day-to-day administrator of the compact agreement in the member jurisdiction, but also represents that jurisdiction in national compact business, such as rulemaking. While the compact speaks minimally to this issue, it doesn't speak at all to the formation and development of a national representative organization, membership, leadership, roles and responsibilities, authority, bylaws and finances.

Regulations

“Regulation No. 0.01 - Forms, (1) - To promote efficiency in processing placements pursuant to the Interstate Compact on the Placement of Children (ICPC) and to facilitate communication among sending agencies, states and other concerned persons, the forms promulgated by the compact administrators, acting jointly, shall be used by all sending agencies, sending and receiving states, and others participating in the arranging, making, processing and supervision of placements.”

Reg. No. 0.01 (1) specifically requires the development and use of standardized forms in the interstate movement of ICPC children. This is an administrative issue, but one that should be included, generally speaking, in the compact language itself. For instance, the phrase “...establish uniform standards of the reporting, collecting and exchanging of data...” would suffice so long as other details, i.e. “...states shall use the forms or electronic information system authorized by the commission for all communication regarding offenders between or among states...” are specified in the rules. Drafters may choose to provide more detail as to forms in the rules.

“Regulation No. 5 – Central State Compact Office, (1) - It shall be the responsibility of each state party to the Interstate Compact on the Placement of Children to establish a procedure by which all Compact referrals from and to the state shall be made through a central state compact office. The Compact Office shall also be a resource for inquiries into requirements for placements into the state for children who come under the purview of this Compact.”

Reg. No. 5, (1) specifically requires states to establish a state-based operating authority under which to execute ICPC agreement provisions, e.g. a “central compact office.” Neither this section, nor the compact itself however, specify anything beyond the establishment of an “office”, such as an in-state advisory body, etc. It will be important to consider further defining this aspect of the compact and set forth certain requirements as to advisory and oversight of the in-state compact processes.

“Regulation No. 5 – Central State Compact Office, (2) - The Association of Administrators of the Interstate Compact on the Placement of Children deems certain appointments of officers who are general coordinators of activities under the Compact in the party states to have been made by the executive heads of states in each instance wherein such an appointment is made by a state official who has authority delegated by the executive head of the state to make such an appointment. Delegated authority to make the appointments described above in this paragraph will be sufficient if it is either:

specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees; a responsibility of the official who has the delegated authority that is customary and accepted in the applicable state; or consistent with the personnel policies or practices of the applicable state. Any general coordinator of activities under the Compact who is or was appointed in compliance with this paragraph is deemed to be appointed by the executive head of the applicable jurisdiction regardless of whether the appointment preceded or followed the adoption of this paragraph.”

Reg. No. 5, (2) deals with who is the appointed person with the authority to make decisions both in-state and out-of-state, i.e. at the Association and in rulemaking. The section further describes the delegation and appointment process as recognized by the Association. In a revised compact, this section may be largely reduced in size by stating specifically who the compact administrator is and/or how they are appointed and stating clearly and briefly if and how delegation of that duty may be made. It will be important to go beyond relying on the state to define this (“...specifically described in the applicable state's documents that establish or control the appointment or employment of the state's officers or employees...”) and should be defined clearly in the compact itself.

(NOTE: both sections (1) and (2) seem to be on the right track, however the language is antiquated and should be redrafted in a much clearer and concise fashion.)

Administrative & Governing Structure suggestions:

Governing Body

As the ICPC is revised, it will need to establish an unambiguous third party organization that will serve as its governing body. The body should enjoy full-time staff support and should be governed by representatives of the member jurisdictions. The governing body should be clearly detailed in the compact language with specific details provided on:

- a) Governing body creation and name;
- b) Governing body membership;
- c) Ex-officio membership on the governing body;
- d) Allocation of votes (i.e. one vote per member jurisdiction);
- e) Voting majority; f) required governing body meeting frequency (i.e. establish minimum);
- f) Leadership and governing body governance structure (i.e. executive committee, leadership positions, etc.);
- g) Other voting and business procedures;
- h) Records maintenance and public access;
- i) Public notice requirements for meetings and governing board action;

- j) Conditions under which a meeting of the governing body may be closed; and
- k) Data gathering and sharing requirements (i.e. information sharing system).

The compact should also go on to describe the specific powers and duties of the governing body:

- a) Conduct dispute resolution;
- b) Promulgate rules;
- c) Oversee, supervise and coordinate transfers between states;
- d) Enforce compliance with compact and rule provisions;
- e) Establish and maintain offices;
- f) Purchase and maintain insurance;
- g) Borrow, accept, hire or contract for personnel services;
- h) Establish and appoint committees;
- i) Hire staff;
- j) Elect and appoint officers and employees;
- k) Accept donations of money, equipment, etc.; lease, purchase, etc.; sell, convey, mortgage, etc.; make expenditures; in order to facilitate the work of the governing body;
- l) Establish a budget;
- m) Collect dues;
- n) Sue and be sued;
- o) Adopt bylaws and a seal;
- p) Report annually to member states and other specific groups;
- q) Coordinate training and education;
- r) Establish uniform standards for collecting and exchanging data; and
- s) Perform other functions as may be necessary to execute the provision of the compact and its rules.

The compact should further specify the organization and operation of the established governing body, with specific reference to:

- a) Leadership
- b) Officers
- c) Committees
- d) Staff
- e) Indemnity

Finally, drafters may consider the development of an advisory body in each state to promote the compact's interests and provide oversight and advocacy on compact issues. Referred to as a "State Council" in other compacts, this body may be granted a range of powers and authority including oversight, advocacy, and policy and procedural development for the state.

Bylaws

The governing body must develop and maintain bylaws under which its business will be organized and conducted. At a minimum, the bylaws of the governing body should address:

- a) Requirement to adopt bylaws;

- b) Establish a fiscal year;
- c) Establish an executive committee and other committees as appropriate;
- d) Conduct of meetings;
- e) Establish titles and responsibilities of officers and staff;
- f) Establish provisions for conducting business;
- g) Provide transition rules; and
- h) Establish standards and procedures for compliance and technical assistance and training.

Committees

The governing body will need to establish committees in order to conduct business. While an executive committee should be specified in the compact and the bylaws, other committees should be allowed for and may be further specified in the bylaws. Membership and appointment to committees should be addressed in the bylaws. At a minimum, the governing body should consider the following committees:

- a) **Compliance** - responsible for monitoring the compliance by member states with the terms of the compact and the rules, and for developing appropriate enforcement procedures for the governing body's consideration.
- b) **I.T. / Information Sharing** - responsible for identifying and developing appropriate information technology resources to facilitate the transfer and tracking ICPC children and the administration of compact activities.
- c) **Finance** - responsible for monitoring the governing body's budget and financial practices, including the collection and expenditure of revenues and for developing recommendations for the membership's consideration.
- d) **Rules** - responsible for administering the rulemaking procedures and for developing proposed rules for the governing body's consideration.
- e) **Training** - responsible for developing educational resources and training materials for use in the member states to help ensure awareness of, and compliance with, the terms of the compact and the rules.

Additionally, the ICPC governing body may need other, policy specific committees in order to adequately conduct business, such as (hypothetical) an **Intergovernmental Affairs Committee** to coordinate efforts with the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance and an **Outcomes Improvement Committee** that looks at best practices and policies for improving adoption and foster placements.

Rules and Rulemaking

In addition to the compact language the governing body will need to develop and maintain a detailed set of rules to govern the activities of the compact. If the compact language is the skeleton, the rules are the muscles – while they rely on the compact for authority, they are the true actuators of compact activity. The compact language should, at a minimum, set forth the rulemaking procedures and requirements. These should include:

- a) Authority to promulgate rules;
- b) Establish administrative procedures by which rules will be adopted, noticed and maintained;
- c) Noticing requirements;
- d) Publishing requirements;
- e) Public hearing requirements;
- f) Minority report / opinion requirements;
- g) Provide for Judicial Review, if requested w/i specific time;
- h) Establish process for formal rule rejection by member states;
- i) Authorize transition rules; and
- j) Provide for the development and adoption of emergency rules.

Additionally, the compact may be crafted to set forth a minimum set of issues that are required to be initially addressed by the governing body.

Finance

The issue of finance has been contentious during the life of the ICPC. Originally designed to be a strictly reciprocal agreement on placements, including financing of placements, the issue area has evolved in such a way that no longer makes this viable. As such, drafters need to consider two different aspects of financing: 1) state payment for transfer activities, including home studies, transport, etc.; and 2) financing of the governing body, its staff and activities. Specific issues to be addressed include:

State Payments

- a) Interstate payments;
- b) Home study cost coverage; and
- c) Fixed price interstate services.

Governing Body Finance

- a) Authorization to pay expenses;
- b) Authorization to levy a state assessment;
- c) Provision to not incur obligations beyond reasonable financial abilities to pay;
- d) Provision to not pledge the credit of the member states;
- e) Accounting requirements; and
- f) State assessment formula (if needed).

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