



NORTH CAROLINA MILITARY AFFAIRS COMMISSION

Minutes of the 1st Quarter Legislative Affairs January 21, 2020 **Legislative Office Building (LOB), 300 N. Salisbury, Raleigh, NC**

MEMBERS PRESENT:

Sally-Ann Gupta AR for Sen Harry Brown
Rep George Cleveland
Paul Friday
Mayor William Lewis (by phone)

MEMBERS ABSENT:

Senator Harry Brown
Mayor Chuck Allen
ET Mitchell

ADDITIONAL ATTENDEES:

Jamie Norment, ACT (by phone)
Angella Dunston, DMVA (by phone)
Kara McCraw, NCGA Staff
Wade Butner, DPI
Chloe Gossage, DPI
Kelly Jackson, DMVA

CALL TO ORDER, WELCOME REMARKS:

Ms. Sally-Ann Gupta chaired today's meeting on behalf of Senator Brown. Sally-Ann Gupta called the meeting to order at 10:07 am. She conducted a roll call of attendees and there was not a quorum. The meeting minutes from the 3rd Quarter meeting, dated July 19, 2019 had been approved at the NCMAC meeting dated August 20, 2019 by the Legislative Affairs Committee members.

NEW LEGISLATION:

Sally-Ann Gupta said that the committee was going to dive into the substance of the meeting today. The Legislative Affairs Committee was alerted to an issue by the Quality of Life Committee, chaired by Kirk Warner. This concerns some language in the Interstate Compact on Educational Opportunity for Military Children that is not fully capturing all of the service members military child dependents. There is a gap or problem that exists for these children when they go to enroll in a Local Education Agency (LEA), and their Parent/Service Member/Custodian is deployed. There is an issue or some problems with getting them enrolled in their local LEA and how we have been previously defining deployments. Whether that is fully capturing the problem from a statutory perspective. This issue was also raised by Mr. Mike Archer, Camp Lejeune. Let's go ahead and discuss the issue. We do have a potential legislative solution that has been drafted. We can discuss that as well.

Sally-Ann Gupta asked if everyone had read the emails from Mr. Mike Archer? Sally-Anne Gupta said that she would refresh the committee on this information. Mr. Archer notes in his email that the current statutory structure is missing the mark for some service members and their dependents. He notes that under current law there are commonly accruing situations in which a service member/parent must relinquish custody of their child before a court to participate in a temporary assignment and then go through court proceedings after the assignment to reacquire custody of their children in order to

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enroll their child in a local LEA while they are deployed or otherwise unavailable. We can all agree that that is a very unnecessary requirement for the service member. What we want to do is streamline this process for the service member and ensure that it is as easy as possible for them to transfer guardianship strictly for the purposes of having their child enrolled in school to another individual. Also, that we aren't getting overly involved in whether their reassignment is due to a temporary duty reassignment, due to a change of station reassignment, or what the nature of their deployment is or how long they would be gone. We have discussed a potential legislative fix this morning. She asked Kara McCraw to describe what this revised language does.

Paul Friday said that he knew they were trying to come up with a solution that is independent of why the person/adult may not be there. But under the other wording, if a person was truly deployed, with their unit, that was not an issue like long term training or things like that took them away, that caused this gap. Rep Cleveland said that there was a problem when someone was deployed with the unit and they did not have the legal guardian or power of attorney. We are trying to solve it across the board.

Kara McCraw handed out the hard copy of the document. Under the current law, the military compact actually refers back to current statute on student assignment which is G.S. 115C-366. What you have on the handout is a3 which is student who are not domiciled in a LEA. This is a circumstance not where you have a soldier stationed at Fort Bragg and his family lives there. But a soldier who is stationed somewhere else who needs their child to come and live in NC while they are being deployed or for other reasons. There is a list of different things, but we are looking at (1) g. which refers to the military. There are 3 circumstances in current law. The first is when the parent is on active military duty and deployed outside of the LEA in which the student is going to reside. That has to be for more than 30 days. There are 2 other circumstances that I don't think come into play here. One is for someone that is medically discharged or retired due to severe injury. Then the other is an individual who dies on active duty. In those cases, for one year the child can reside in NC and attend school. We are going to strike the initial one, on active military duty and place it on page 2 under the new h. The language that we will strike is g. 1. On active military duty and is deployed out of the local administrative unit in which the student resides. For purpose of this sub-sub-subdivision, the term "active duty" does not include periods of active duty for training for less than 30 days. So, if the parent is on active military duty and the commanding officer basically fills out an affidavit or attests that due to the military orders that the parent has, and the student is unable to reside with parent, that will be the trigger for them to be qualified to enroll in a North Carolina school. She did include a sentence that the committee may want to discuss. They would complete the affidavit and they would also indicate the time period of the military duty, so it would not be an indefinite enrollment. It would be tied to the length of time of the parent's military orders. Then finally it has the limitation and intended for a short period. That is the proposed solution and not try to define all of the different circumstances that may trigger something like this. Then we are using the Commanding Officer as the check to determine if this is necessary for the soldier to place their child in a different living circumstance. That is the proposed language. There is some additional language on page 3 to address the one other issue that was raised. This one is a little more technical but a valid point. We do have a number of soldiers that are stationed in NC who are domiciled in other States. Under NC law the courts have always said that your residence and domicile are the same thing. So, to clarify that point, and if they are not a domiciliary of this State, but they are residing in NC pursuant to active military duty orders, they are fine to enroll in the schools and that

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Tracks some of the language that we have used. We have recently used a couple of other things to allow for early enrollment when people are being transferred in and track some of that same language.

Sally-Ann Gupta said that we hope that this will provide an over-arching statutory structure so that local school administrators don't have any questions or doubt in their minds as to the circumstances under which it is appropriate for them to enroll a military child dependent into their program when the parent/service member/guardian is otherwise unavailable. What we have now is and hope is some clearer language with a back stop built into the Commanding Officer. The Commanding Officer has to sign off on these orders/attestation. Attesting that the service member is otherwise unable to reside due to their military service with this dependent child for the purpose of enrolling this child in a local education district.

Rep Cleveland said that we have had a problem with the term legal guardian. He thought that we were going to address that with the affidavit, and it will suffice for that. Kara McCraw said that the parent or legal guardian in that language is referring to the person who is normally the person. Because in some cases that soldier may be the legal guardian of the child and not their actual parent. But if you go down and this is the current law to page 2 and line 30. The person that the child is going to live with is called the caregiver adult and not a legal guardian. This will operate under the same system as if the soldier is the parent or the legal guardian and is going to need to place their child with someone in NC. That person as a caregiver adult does not have to be given full legal guardianship of the child but they do have to attest that they will accept responsibility for the educational decision of this student. Rep Cleveland said that he thought we were having issues with some of the school systems saying that they must have legal guardianship. Kara McCraw said that she thought that was just a misinterpretation of the law. We can add a sentence to that. Rep Cleveland said to add a sentence that states that the affidavit will provide the legal guardianship. That will solve that problem. Kara McCraw said that do you want them to have legal guardianship or not. Rep Cleveland said that the affidavit will serve as the legal guardianship. The affidavit will be the legal document and the document of legal guardianship. Kara McCraw said that she thought we could say that the affidavit will serve for the educational decisions. She doesn't think that we can give them legal guardianship. Rep Cleveland said that we are giving them legal guardianship are we not? We are saying that in lieu of a legal guardianship document, this affidavit will suffice. Kara McCraw said that it already says that, but we will reinforce that.

Sally-Ann Gupta said that maybe a court order of legal guardianship is not required for the purposes of this statute and enrollment of the child. Rep Cleveland said that he wanted to make sure that it is perfectly clear. Kara McCraw asked if she could contact the NC School Board Association so that she can find out why they have local school districts that are reading it that way because it has never been read that way before. That they have to have legal guardianship for any of these exceptions. They are only supposed to have to complete the affidavits. Rep Cleveland told Kara McCraw that she could contact the NC School Board Association. Kara McCraw said that she wanted to double check with them to ensure that the language will get to the point of what the problem is. She is not sure why they are reading it that way because that is not what the Statue requires.

Sally Ann Gupta said that what we definitely want and what we do with any revisions to a Statue is to take the interpretive part out. We want to make it abundantly clear what the guidelines are and that

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any attestation by a Servicemember's Commanding Officer, that they are unavailable to reside with the minor child for purposes of enrollment is sufficient to enroll these children, when they are put in the care of the designated caregiver. Kara McCraw said as the Statue reads now that should be enough, because basically the Statue reads that upon receipt of the affidavits they should be enrolled. They should not be requiring evidence of legal guardianship. She just wants to follow up more to find out what is triggering them to think they need to have that. We have had some cases in the past that some of these enrollment issues, where it is a misreading of the law. Once they have gotten more education on it, it has been poorly informed school board attorneys. We will figure that out.

Chloe Gossage asked if we have a definition of a caregiver adult in the Statue? Kara McCraw said that there was a definition in the Statue. It is the adult with which the child resides. She said they do not have to have legal guardianship. Chloe Gossage asked if it would be helpful to put some clarifying language in there? She thought it was a good idea to reach out to the School Board Association and she could have Doug Taggart contact her with what he has heard from particular school districts. Would that add another layer of clarity. Kara McCraw said they also have a definition of what is a legal custodian, which is the person who has been awarded legal custody in the Statue. It is very clear that caregiver adult and legal custody are not the same. So, what other language can you use. She said we could say, the person with whom the child resides, who is not the child's legal custodian. Chloe Gossage asked if we could say the caregiver adult is not required to be the legal custodian of the child. Kara McCraw said that the other problem is that caregiver adult is used broadly and includes foster parents who are given legal custodianship. Sally-Ann Gupta asked if we need to cross reference on line 30 the statutory definition of caregiver. Kara McCraw said that it is in the same Statue. Rep Cleveland said to make it as simple as you can. He said that he thought the simplest thing was the affidavit provided from the individual will be the legal document. Kara McCraw said that is what the Statue says. But maybe some school systems think we need more information.

Paul Friday said that at a minimum checking with the School Board Association can't hurt the issue and other type of parenting issues by adding it. Sally-Ann Gupta said that all this affidavit needs to do is list the service member, substitute caregiver, and the attestation by the Commanding Officer. Rep Cleveland said that they already have the form for the affidavit. Kara McCraw said that the other part is that the caregiver adult does have to accept responsibility of education and that is the other affidavit that they have to have. So that may be where they are saying we think a legal guardianship is what proves that you are willing to accept that responsibility. But that is not what the Statue says.

Rep Cleveland asked about page 2, line 11. He thinks it is saying that we are requiring a Commanding Officer to sign an affidavit and he thinks it should be a letter from the Commanding Officer. Kara McCraw asked if we need to develop a form that could be used by all of the school systems and given to the service member to take to their Commanding Officer as apposed to a letter that there could be a number of variations of the letter. Rep Cleveland said that the Commanding Officers know what to put in that letter. Sally-Ann Gupta asked if DPI could develop that form? Re Cleveland said that he didn't think a form was needed. The Commanding Officers already follow a format for this, and they will be basically the same.

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Kara McGraw said instead of saying attest, say that the Commanding Officer will provide a letter that will do the following. Rep Cleveland said that was fine. Kara McGraw said that she would change it to signed letter. She asked if there was anything else or language that needs to be refined. Rep Cleveland said that he needed to run this draft document by Mike Archer. Paul Friday said that he would be seeing Mike Archer today and would share a copy with him. Rep Cleveland said that he would also send him a copy.

Sally-Ann Gupta asked if anyone on-line had any questions or comments. Kelly Jackson asked Rep Cleveland if he would be sharing this document to the members for the Quality of Life meeting on January 23. Rep Cleveland said that he would attend that meeting and share this information with that committee. Kara McGraw said that she would make all of the changes and then send out to the committee members. Paul Friday asked what efforts were taken to do this administratively? Was there an administrative fix for this or was this legislation the only way to fix this issue? Rep Cleveland said that he had not received anything from DPI for an administrative fix. Chole Gossage said that from DPI, there are some things that they can do administratively in terms of training and education to make sure that districts understand that legal guardianship is not required. Also, to ensure that they are following the federal definition of deployment. It sounds to her like some of these issues go beyond the federal definition of deployment. The current Statue says deploy, so if you want to go farther and you want to deal with intensive training times on base, that is going to require a change in Statue. This is not on base training; they have to leave their residence to participate in this. Kara McGraw said that the way this is written, she thinks some of the circumstances that Mr. Archer had raised were folks who might not have to leave the base. He gave the example of the drill sergeant that might still be on base. Rep Cleveland said that the drill sergeant goes to Paris Island, SC to be a drill sergeant. This deals with people who are not in their residence on the base. Kara McGraw said that we have taken the word deployed out. So, it is up to the Commanding Officer, for whatever the reason, the child can't reside with the parent. It is pretty broad. She asked if she should put the word deployment back into the language? Rep Cleveland said that he did not think that was necessary. This should cover all of the problems that Mike Archer pointed out. We also have the 30 day restriction in there.

Chole Gossage said that they held up on an administrative fix like telling districts to go by the federal definition of deployment knowing that you all were working on this and then not confusing them. Paul Friday said that is makes it clear.

DISCUSSION/QUESTIONS:

Sally-Ann Gupta asked if there were any other issues that this committee can address? Kelly Jackson said that another topic from the Quality of Life Committee is In-State Tuition. The discussion about acceptance and enrollment into a college to receive in-state tuition. Rep Cleveland said that an example is that they have been accepted by a school and their parent receives Permanent Change of Station (PCS) orders. Is the student still entitled to in-state tuition because they are not enrolled? His reading on that topic is that yes based on the fact that they have been accepted. The laws say that as long as the parent was here when they got into school and stays in school, they receive in-state tuition. He said that he is making a couple assumptions. He will have to do more research on this topic. Paul Friday said that the issues seems to be the time during accepted and enrolled. Kara McGraw said that there is a gap for folks who are stationed in NC. If they have started in college they are automatically given in-state

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tuition. The gap in the Statue currently is that you have to remain continuously enrolled and they have not enrolled yet. The issue for a senior in high school who has been accepted and during that summer period their parent is transferred elsewhere they would somehow be able to hook into the continuously enrolled. Rep Cleveland asked Kara McGraw to work on that issue. She said that a Residency Determination Service (RDS) will look at your status when you start school and not when you were accepted. She said that she could write something to cover this circumstance. Kara McGraw said that they determine your tuition status when you actually start and not when you get accepted. She could write something in to cover that circumstance because you would anticipate that you would be covered. She also said that that Statue covers both folks in the military and as well as their children and dependents. This circumstance is talking about high school students. Another example is a soldier that is accepted, and they have not started yet and get transfer orders. Do you want to cover them as well? We have a lot of remote programs and a lot of distance education programs. So, we have cases like this. We have soldiers that get transferred but complete their distance learning courses. Rep Cleveland said that he thought we should just work on high school students at this time. Paul Friday said that they would be covered already. Kara McGraw said only if they had already started. She said that if they were accepted they would not be covered.

Kelly Jackson said that the other topic that has been discussed in the Economic Development committee is military retirement tax exemption. Rep Cleveland said that there are a couple of Bills out on that topic.

ADJOURNMENT:

Sally-Ann Gupta requested a motion to adjourn the meeting. Representative George Cleveland made a motion to adjourn the meeting and seconded by Paul Friday. The meeting adjourned at 10:55 pm.