

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)
14 **DE Admin. Code** 1006

FINAL

REGULATORY IMPLEMENTING ORDER

1006 Delaware Interscholastic Athletic Association (DIAA)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Department of Education ("Department") is amending 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). The Delaware Interscholastic Athletic Association ("DIAA") is a unit of the Department. In accordance with 29 **Del.C.** §10113(b)(2), Section 9.0 is being amended. Section 9.0 provides the rules of practice and procedure concerning requests for the DIAA Board of Directors to waive an interscholastic athletic rule or regulation.

On December 9, 2021, the DIAA Board of Directors voted to propose that the Department informally adopt the amendments to Section 9.0.

II. FINDINGS OF FACTS

The Department finds that the proposed amendments to Section 9.0 are necessary to implement the provisions of 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA).

The Department further finds that the proposed amendments provide rules of practice and procedure concerning waiver requests. As a result, the amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "A" is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 14th day of December, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

1006 Delaware Interscholastic Athletic Association (DIAA)

1.0 Organization Name, Purpose, and Definitions

1.1 The organization shall be known as the Delaware Interscholastic Athletic Association (DIAA) and shall function as the official designee of the Secretary of Education with the authority to implement the Department of Education's Rules and Regulations governing the conduct of interscholastic athletics.

1.2 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Administrative Head of School" means the chief or head individual in charge of the school traditionally referred to or generally known as the principal or headmaster.

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 Del.C. Ch. 3 or its designee.

"Department" means the Delaware Department of Education.

"Guardian" or **"Legal Guardian"** means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and shall be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Individualized Education Program" or **"IEP"** means a written statement for a child with a disability as defined in 14 DE Admin. Code 922.

"Member school" means a full or associate member school of the DIAA.

"Principal" or **"Headmaster"** means the Administrative Head of School and includes but is not limited to Head of School, Administrator, Executive Director, or Charter Head.

"State Board" means the State Board of Education of the State of Delaware established pursuant to 14 Del.C. §104.

11 DE Reg. 1632 (06/01/08)

15 DE Reg. 69 (07/01/11)

23 DE Reg. 1024 (06/01/20)

24 DE Reg. 538 (12/01/20)

2.0 Membership in DIAA

2.1 Full Member Schools: Any middle and secondary school located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, including nonpublic, private, and public schools, authorized by Title 14 of the Delaware Code, may become a full member school of DIAA. Membership requires the payment of dues and a signed affirmation of the obligations of membership.

2.1.1 A full member school is a non-voting member of DIAA and does not participate in its day to day governance. A full member school may at any time make appropriate recommendations for policy action to the DIAA Board of Directors for its consideration.

2.1.2 Membership shall include all middle and secondary and middle public schools participating in interscholastic athletics and such nonpublic schools that may elect to become full or associate members.

2.2 Associate Member School: Any school, not a full member school, located within the boundaries of the state of Delaware and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate member school provided the applicant sets forth good cause and sufficient justification why such school cannot become a full member school. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

2.2.1 Associate Membership Criteria: The membership application shall contain a statement that the school will abide by the Rules and Regulations of the Department of Education and the Delaware Interscholastic Athletic Association and in those cases wherein the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate member school competes with a full member school of DIAA or a comparable state association; participates in DIAA sanctioned tournaments and meets in cross country, indoor track, wrestling (except dual team tournaments), outdoor track, and golf involving the aforementioned full member schools; or participates in a state championship event.

2.2.2 Such associate member schools, after initial approval, shall be reviewed each year by the DIAA Board of Directors for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

2.3 Membership Dues Schedule: Yearly dues for full member and associate member schools shall be as follows:

2.3.1 \$500 for middle schools.

- 2.3.1.1 If a middle school and high school are located in the same administrative unit and the combined student enrollment of grades 6th through 12th is 499 or less then the school shall pay only the high school fee and be exempt from the middle school fee.
- 2.3.2 \$750 for high schools with enrollments of 499 or less.
- 2.3.3 \$1,000 for high schools with enrollments of 999 or less.
- 2.3.4 \$1,250 for high schools with enrollments of 1,499 or less.
- 2.3.5 \$1,500 for high schools with enrollments of 1,999 or less.
- 2.3.6 \$1,750 for high schools with enrollments of 2,000 or more.
- 2.3.7 Enrollment figures are based on the September 30 enrollment count from the prior school year as verified by the Department of Education.
- 2.3.8 Membership dues shall be paid each year by October 1st. Member schools which have not paid dues by January 1st shall be assessed a 10% late fee. Full member and associate member schools which fail to comply may be subject to penalties as determined by the DIAA Board of Directors.
- 2.4 Participation in State Championship Tournaments and Meets: Member schools must meet all the following criteria to be eligible to participate in the DIAA approved state championship tournament and meet:
 - 2.4.1 Be in compliance with all DOE and DIAA regulations;
 - 2.4.2 Be a DIAA member school in good standing including but not limited to paying all fees;
 - 2.4.3 Sponsor a team in the given sport;
 - 2.4.4 Be in compliance with and meet all requirements of the tournament manual for that sport;
 - 2.4.5 Sponsor one varsity sport per season, co-ed schools must sponsor at least one varsity sport per gender per season;
 - 2.4.6 Sponsor a minimum of two grades, one of which must be the eleventh grade; and
 - 2.4.7 Has been a DIAA member school for a minimum of two full school years (eligible in the 3rd year).
- 2.5 Compliance with Regulations: Member schools shall comply with the regulations of the Delaware Interscholastic Association and acceptance of membership shall be construed as an agreement to that effect.

11 DE Reg. 1632 (06/01/08)

15 DE Reg. 69 (07/01/11)

23 DE Reg. 1024 (06/01/20)

3.0 DIAA Board of Directors

- 3.1 Conflict of Interest: Any member of the Board who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse himself or herself from consideration of the matter and shall not vote on that appeal or waiver request. The Chairperson of the Board is responsible for maintaining the integrity of the decision making process.
- 3.2 Committees of the DIAA Board of Directors
 - 3.2.1 Standing Committees
 - 3.2.1.1 The Board has established the following standing committees:
 - 3.2.1.1.1 The recognized sport committees are:
 - 3.2.1.1.1.1 Baseball
 - 3.2.1.1.1.2 Boys' Basketball
 - 3.2.1.1.1.3 Boys' Lacrosse
 - 3.2.1.1.1.4 Boys' Soccer
 - 3.2.1.1.1.5 Cross Country
 - 3.2.1.1.1.6 Field Hockey
 - 3.2.1.1.1.7 Football
 - 3.2.1.1.1.8 Girls' Basketball
 - 3.2.1.1.1.9 Girls' Lacrosse
 - 3.2.1.1.1.10 Girls' Soccer
 - 3.2.1.1.1.11 Golf
 - 3.2.1.1.1.12 Softball
 - 3.2.1.1.1.13 Swimming and Diving
 - 3.2.1.1.1.14 Tennis
 - 3.2.1.1.1.15 Track and Field

- 3.2.1.1.1.16 Volleyball
- 3.2.1.1.1.17 Wrestling
- 3.2.1.1.2 The other committees are:
 - 3.2.1.1.2.1 Officials
 - 3.2.1.1.2.2 Rules and Regulations
 - 3.2.1.1.2.3 Scheduling Committee
 - 3.2.1.1.2.4 Sports Medicine Advisory Committee
 - 3.2.1.1.2.5 Sportsmanship
 - 3.2.1.1.2.6 Student-Athlete Development Committee and Student-Athlete Advisory Subcommittee
 - 3.2.1.1.2.7 Unified Sports®
- 3.2.1.2 The Board may appoint additional committees to assist in the performance of its duties.
- 3.2.2 Committee and Subcommittee Membership
 - 3.2.2.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to one current Board member. The Student-Athlete Advisory Subcommittee shall consist of no less than 10 and no more than 15 subcommittee members.
 - 3.2.2.2 Committee members shall have expertise in the committee's subject matter.
 - 3.2.2.3 Committee membership shall be geographically representative of the three counties and may include administrators, athletic directors, coaches, local school board members, officials, public members, and licensed sports medicine professionals.
 - 3.2.2.3.1 Each committee shall include a current Board member as a member of the committee.
 - 3.2.2.3.2 Each recognized sport committee, as provided in subsection 3.2.1.1.1, shall consist of at least one athletic director.
 - 3.2.2.3.3 The Student-Athlete Development Committee shall also include school counselors, mental health professionals, and school climate or student discipline personnel.
 - 3.2.2.4 The Student-Athlete Advisory Subcommittee shall be comprised of student-athletes only and shall be geographically representative of the three counties.
 - 3.2.2.5 The Executive Director shall make a call for applications to fill vacancies on committees. Prospective and current committee members shall submit a DIAA Committee Application to the DIAA Office. The Executive Director and the committee's chairperson shall review the applications and make recommendations to the Board for approval and appointment or reappointment.
 - 3.2.2.6 The Board's Chairperson, with the advice of the Executive Director, shall appoint a committee member to serve as the committee's chairperson. The committee chairperson shall preside over all meetings of the committee. The committee may elect a vice chairperson who shall serve in the capacity of the committee chairperson in the committee chairperson's absence.
 - 3.2.2.7 The Executive Director shall make a call for applications to fill vacancies on the Student-Athlete Advisory Subcommittee. Prospective and current subcommittee members shall submit a DIAA Committee Application to the DIAA Office. The Student-Athlete Development Committee shall review the applications and appoint or reappoint members.
 - 3.2.2.8 Committee and subcommittee members shall serve staggered three-year terms.
 - 3.2.2.9 Committee members who miss three consecutive meetings shall be reported to the Board, which may appoint replacement committee members.
 - 3.2.2.10 Members of the Student-Athlete Advisory Subcommittee who miss three consecutive meetings shall be reported to the Student-Athlete Development Committee, which may appoint replacement subcommittee members.
 - 3.2.2.11 The Board may remove a committee member whose actions are contradictory to the committee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Board shall appoint a replacement committee member.
 - 3.2.2.12 The Student-Athlete Development Committee may remove a member of the Student-Athlete Advisory Subcommittee whose actions are contradictory to the subcommittee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Student-Athlete Development Committee shall appoint a replacement subcommittee member.
- 3.2.3 Committee Reports and Recommendations
 - 3.2.3.1 The recognized sport committees, as provided in subsection 3.2.1.1.1, shall provide a report to the Board at the conclusion of the state tournament for their sport. The other committees, as provided in subsection 3.2.1.1.2, shall provide a progress report to the Board after each meeting.

- 3.2.3.1.1 Committees shall submit the report in writing to the DIAA Office or designate at least one committee member to deliver the report in writing at the Board's next regularly scheduled meeting.
- 3.2.3.2 Recommendations to the Board from committees shall be submitted in writing to the DIAA Office at least one week prior to the Board's next regularly scheduled meeting. The committee shall designate at least one committee member to attend the Board's meeting and present the committee's recommendation to the Board.
- 3.2.4 The Executive Director and the Coordinator of Interscholastic Athletics shall provide administrative assistance to the committees before, during, and after committee meetings subject to the Department's approval and supervision.

22 DE Reg. 56 (07/01/18)

23 DE Reg. 376 (11/01/19)

23 DE Reg. 1024 (06/01/20)

4.0 Responsibilities of the Executive Director

- 4.1 The Executive Director shall interpret the rules and regulations and may grant waivers of rules and regulations. Any waiver granted shall be temporary and shall be subject to review and approval by the DIAA Board at a subsequent or special meeting. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.
- 4.2 The Executive Director may decide issues between meetings of the Board of Directors. The Executive Director shall initiate a review of or fully investigate an alleged violation of the Rules and Regulations that he/she has seen, heard or read about, or which has been reported to him/her. The Executive Director may also refer investigations to committees referenced in subsection 3.2.1.2 or employ special investigators as necessary to conduct such investigations. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a player, team, coach or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.
- 4.3 The Executive Director shall carry on the business of the DIAA Board and DIAA between meetings. Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board of Directors. No school or individual shall be penalized in any case in which the DIAA Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the day to day operation of the organization.
- 4.4 In the event that the Executive Director is unavailable to perform his or her duties due to a conflict of interest or otherwise, and a matter requires immediate action, the Executive Director may delegate the matter to a subordinate, the Sportsmanship Committee, special committees referenced in subsection 3.2.1.2, or to the Chairperson or Vice Chairperson of the DIAA Board of Directors. In such a case, the action shall be treated as the action of the Executive Director under the DIAA rules and regulations.
- 4.5 In the event the executive director position is vacant, the Board may refer the executive director's responsibilities to a designee or designees, subject to the Department's approval and supervision, until the position is filled.

15 DE Reg. 69 (07/01/11)

22 DE Reg. 56 (07/01/18)

23 DE Reg. 1024 (06/01/20)

5.0 Responsibilities, Powers, and Duties of the Administrative Head of School

5.1 Responsibilities of Administrative Head of School

- 5.1.1 The administrative head of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individuals and teams. The administrative head may delegate his or her authority, but such delegation will not negate the responsibility for a violation of the DIAA Regulations by his/her school.

5.2 Powers and Duties of Administrative Head of School

- 5.2.1 The administrative head of each member school shall exercise general control over all of the interscholastic athletic matters of his/her school which include but are not limited to the following:
 - 5.2.1.1 Sanctioning all interscholastic athletic contests in which his/her school participates.
 - 5.2.1.2 Excluding any contestant because of improper conduct or ineligibility.

- 5.2.1.3 Excluding any contestant whose physical health would be jeopardized by such participation, because of illness or injury suffered, until such time as the contestant is declared physically fit by the school or attending physician.
- 5.2.1.4 Protecting the well being of all visitors and officials attending interscholastic athletic contests conducted by his/her school. Administrative heads of member schools shall be expected to provide adequate security and, in the absence of such provisions, penalties may be imposed.
 - 5.2.1.4.1 When a contest is conducted at a neutral site, the administrative heads of the participating schools shall be held jointly responsible for the protection and well being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.
- 5.2.1.5 Protecting the well being of the school's participants by providing them with safe and suitable uniforms and equipment and conducting practices and contests in a manner which minimizes risk to the health and safety of student athletes.
- 5.2.1.6 Ensuring that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.
- 5.2.1.7 Designating a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager. If no such designation is made, the coach shall serve as the faculty manager.
- 5.2.1.8 Ensuring that an authorized representative accompanies the school's teams to all contests.
- 5.2.1.9 Certifying in writing the eligibility of his/her school's contestants in accordance with the Regulations of the Department of Education.
- 5.2.1.10 Exercising such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the Regulations of the Department of Education.
- 5.2.1.11 Urging all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.
- 5.2.1.12 Notification to DIAA of any official delegation of authority.

15 DE Reg. 69 (07/01/11)

6.0 Amendments to Department of Education Regulations

- 6.1 The DIAA Board, the Secretary of Education, the Executive Director of DIAA or any member school may propose changes, additions or deletions to the Department of Education regulations.
 - 6.1.1 Proposed changes shall be submitted in writing by a member school(s) to the Executive Director and these proposed changes and any other changes submitted by the Secretary of Education or the Executive Director of DIAA or the DIAA Board of Directors shall be reviewed by the Rules and Regulations Committee.
 - 6.1.2 Any proposed changes to the Regulations along with comments received from the Rules and Regulations Committee, shall be considered at a scheduled meeting of the DIAA Board. Proposed changes adopted by the Board shall thereafter be submitted to the Secretary of Education who will place them on the State Board of Education agenda for review and final approval.
 - 6.1.2.1 All member schools shall then be advised in writing of any proposed changes.
 - 6.1.2.2 The member schools and the public shall have an opportunity to review and comment on the proposed changes during the thirty day period that the regulations are advertised in the *Register of Regulations* (as per the Administrative Procedures Act).

23 DE Reg. 1024 (06/01/20)

7.0 Reporting Violations of Department of Education Regulations and Protests and Complaints to DIAA

- 7.1 Reporting violations of Department of Education regulations
 - 7.1.1 If a school violates a provision of the Department of Education regulations the administrative head or his/her designee shall notify the Executive Director in writing of the violation. The Executive Director may impose immediate penalties. All violations shall be reviewed by the DIAA Board of Directors which may impose additional penalties.
 - 7.1.1.1 The Executive Director or DIAA Board of Directors may impose additional penalties above the automatic penalties listed within the specific regulation violated as deemed necessary to assure proper conduct of interscholastic athletics or for repeat offenses.
- 7.2 Reporting Protests and Complaints

- 7.2.1 All protests involving game competition that are allowable as defined in the NFHS (name of sport) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three person protest panel. This panel will include the DIAA Executive Director, the DIAA Chairman or Vice Chairman of the Board and the State Tournament Director of the given sport. Protests must be submitted in writing within 48 hours of the conclusion of the contest or earlier if required by NFHS rules. The decisions of the DIAA protest panel may not be appealed.
- 7.2.2 All complaints other than protests involving game competition brought before DIAA shall follow the procedures in 14 **DE Admin. Code** 1006, Section 8.0 and 14 **DE Admin. Code** 1007, subsection 2.1.

9 DE Reg. 117 (07/01/05)

15 DE Reg. 69 (07/01/11)

19 DE Reg. 1085 (06/01/16)

23 DE Reg. 1024 (06/01/20)

8.0 DIAA Board of Directors Investigative Procedure

- 8.1 The following investigative procedure shall be followed when the DIAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DIAA.
 - 8.1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.
 - 8.1.1.1 If such complaint is regarding the administrative head of school, the complaint may be referred directly to the superintendent, governing body or the equivalent supervising authority.
 - 8.1.2 Permission shall be sought from the administrative head of the member school to interview students and staff members and each person interviewed shall be informed of the nature of the investigation. Parents may also provide permission to interview their child.
 - 8.1.3 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).
 - 8.1.4 When immediate punitive action by the Executive Director is necessary, the action taken shall be stated in writing.
 - 8.1.5 When charges are to be presented to the DIAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

15 DE Reg. 69 (07/01/11)

9.0 Waiver of DIAA Rules and Regulations

- 9.1 General Hearing Procedures and Rules
 - 9.1.1 The Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:
 - 9.1.1.1 In the case of eligibility waiver requests, there exists a hardship as defined by subsection 9.2.1;
 - 9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the rule;
 - 9.1.1.3 The spirit of the rule being waived will not be offended or compromised;
 - 9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and
 - 9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.
 - 9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule or regulation alone, whether by the student athlete, the student athlete's family or school, or other affected party shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant to show extenuating circumstances warranting waiver.
 - 9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data information to make it possible for DIAA to reach a decision without further investigation. It is not the duty of the Executive Director or the Board to produce or collect information. If a waiver request does not include all of the required documentation, it will be deemed incomplete and will not be processed by DIAA.
 - 9.1.3.1 For a waiver request of an eligibility rule, the required documentation is set forth in subsection 9.2.2.2.

- 9.1.3.2 For a waiver request of a non-eligibility rule, the required documentation is set forth in subsections 9.3.2 and 9.3.4.
- 9.1.4 All requests for a waiver, with all documentation complete, must be received by the Executive Director at least ~~24~~ 30 calendar days before the next regularly scheduled meeting of the Board.
- 9.1.5 ~~Based on the waiver request and documentation submitted with the request,~~ For requests for a waiver of an eligibility rule, the Executive Director will decide whether to grant a temporary waiver, as provided in subsection 4.3, ~~based on the waiver request and documentation submitted with the request.~~
- 9.1.5.1 If the Executive Director decides to grant a waiver under subsections 4.3 and 9.1.5, the waiver is temporary and subject to the Board's approval. The Executive Director will send written notice of the decision to grant a waiver to the applicant, including when the Board will consider the matter. The applicant may attend the Board's meeting but is not required to do so.
- 9.1.5.2 If the Board ratifies the Executive Director's decision to grant a waiver of an eligibility rule, the student athlete will remain eligible to participate as outlined in the Executive Director's written notice provided that the student athlete complies with all other eligibility rules.
- 9.1.5.3 If the Board does not ratify the Executive Director's decision to grant a waiver of an eligibility rule, the student will no longer be eligible to participate as outlined in Executive Director's written notice and an evidentiary hearing before the Board will be scheduled.
- 9.1.6 If the Executive Director does not grant a temporary waiver or the Board does not approve the Executive Director's decision to grant a temporary waiver, a hearing before the Board will be scheduled.
- ~~9.1.6.1 The Board may decide to conduct the hearing itself or designate a hearing panel of three Board members to conduct the hearing.~~
- ~~9.1.6.1.1 The hearing panel shall have the same authority, powers, and duties as the Board for the purpose of conducting the hearing.~~
- ~~9.1.6.1.2 If the hearing is conducted by a panel, the panel will issue a proposed order to the Board. The proposed order will include a brief summary of the evidence and the panel's recommended findings of fact, conclusions of law, and decision.~~
- ~~9.1.6.1.3 The proposed order will be provided to the applicant and the Board. The applicant may submit in writing to the DIAA Office exceptions, comments, and arguments respecting the proposed order. The written exceptions, comments, and arguments must be received by the DIAA Office at least two business days prior to the Board's meeting at which the request will be considered.~~
- ~~9.1.6.1.4 A Board member who serves on the panel for a request will be recused and will not participate in the Board's final decision.~~
- ~~9.1.6.29.1.6.1~~ The Board may permit opening and closing statements.
- ~~9.1.6.39.1.6.2~~ The Board may take testimony, hear proof, and receive exhibits into evidence at a hearing. Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- ~~9.1.6.49.1.6.3~~ Testimony shall be under oath or affirmation. The Board may administer oaths to witnesses.
- ~~9.1.6.59.1.6.4~~ Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Board.
- ~~9.1.6.69.1.6.5~~ The applicant's opportunity to submit documents to the Board for consideration is with the applicant's waiver request and at the applicant's hearing. Any document introduced into evidence at a hearing shall be marked by the Board and shall be made a part of the record of the hearing matter. The Board will not accept or consider documents that are submitted after the hearing, as such documents are outside of the record.
- ~~9.1.6.79.1.6.6~~ Any request by the Board for additional information shall be promptly supplied by the applicant.
- 9.1.7 The Board shall consider the entire record of the case, ~~the hearing panel's proposed order, and any timely submitted written exception, comments, or arguments respecting the proposed order~~ in reaching its final decision. Unless otherwise provided, ~~a decision made~~ the Board's decision on a waiver request shall be effective immediately.
- 9.1.8 The Board's decision ~~shall~~ will be incorporated into ~~a final order~~ a written order, which is signed by the Board and sent to the applicant within 20 days of the hearing.
- 9.1.9 An applicant may be represented by an attorney. The attorney representing an applicant shall notify the Executive Director of the representation in writing as soon as practical. Attorneys who are not members of

the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

9.2 Eligibility Rule Waiver Request (Requests for waivers of rules in Section 2.0 of 14 **DE Admin. Code** 1008 and 1009.)

9.2.1 Unless specifically defined in the eligibility rule in question, “hardship” means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control, or creation of the student athlete, his or her family, and his or her school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his or her family, or his or her school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the Board and in accordance with the following procedures:

9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student athlete to the involved Member School’s Principal, Headmaster, or the Principal or Headmaster’s designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student athlete or the school, or both, for granting the waiver.

9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principal or Headmaster indicating whether the school supports the waiver request.

9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The Board, however, may take into consideration the school’s position on the waiver request when rendering its decision.

9.2.2.2 To aid the Board in making an informed decision, the waiver request shall include the student athlete’s:

9.2.2.2.1 Official transcripts from the sixth grade through the current school year and ~~semester grades for the current school year~~ most recent report card or grade report (if the most recent grades are not included on the transcript);

9.2.2.2.2 Attendance records for the last two years;

9.2.2.2.3 A letter from the Principal or Headmaster of the school requesting the waiver either supporting or not supporting the waiver request;

9.2.2.2.4 A letter from the student athlete, the student athlete’s parent, guardian, or Relative Caregiver, or both explaining in detail the circumstances for requesting a waiver;

9.2.2.2.5 Documentation of withdrawal from a school (if applicable);

9.2.2.2.6 Documentation of acceptance in a school, such as an acceptance letter from a nonpublic school (if applicable);

9.2.2.2.7 School District Choice Enrollment Program documents that show the date of withdrawal and the date of enrollment (if applicable);

9.2.2.2.8 School calendar;

~~9.2.2.2.4~~9.2.2.2.9 Any documentation specifically required by the rule;

~~9.2.2.2.5~~9.2.2.2.10 Medical records (if applicable);

~~9.2.2.2.6~~9.2.2.2.11 Legal documentation (if applicable);

~~9.2.2.2.7~~9.2.2.2.12 IEP’s (if applicable); and

~~9.2.2.2.8~~9.2.2.2.13 Any documentation or evidence to substantiate a hardship ~~or extenuating circumstance exists.~~ exists;

~~9.2.2.2.9~~9.2.2.2.14 For waiver requests of the Junior High and Middle School Transfer Rule (14 **DE Admin. Code** 1008-2.4) and High School Transfer Rule (14 **DE Admin. Code** 1009-2.4), documentation of official withdrawal from the sending school and official registration in or acceptance to the receiving school. In addition, the student athlete is required to obtain a certification from the sending and receiving schools that the student athlete transferred for the reasons indicated on the student athlete’s waiver request form and that the student athlete’s transfer was not motivated by an athletic purpose. If the student athlete is unable to obtain a certification from the sending school, the receiving school, or both schools, the student athlete may submit a written statement explaining why the student athlete is unable to obtain the certification.

9.2.3 An appearance by the student athlete and the student athlete's parent, guardian or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.

9.3 Waiver Requests of Non eligibility Rules

9.3.1 The Principal or Headmaster of a Member School, or any other individual may request a waiver of a rule or regulation not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule or regulation.

9.3.2 All requests for non eligibility waivers must be in writing, signed by the Principal or Headmaster, or other individual.

9.3.3 An appearance by the applicant requesting the non eligibility waiver is optional. If the Principal or Headmaster or the Principal or Headmaster's designee or other individual requesting the non eligibility waiver chooses to appear before the Board the individual must notify the Executive Director of the individual's intent to do so at the time the request for waiver is filed. Otherwise, the individual may attend the meeting but may not be permitted to address the Board.

9.3.4 If the waiver requested would affect more than one Member School, the applicant shall provide the position of the other affected Member Schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

9.4 Exceptions to Playing Rules for Student Athletes

9.4.1 Notwithstanding subsection 9.1.1, a student athlete who requests an exception to a playing rule that has been adopted by the Board shall establish the following four conditions by a preponderance of the evidence:

9.4.1.1 The student athlete has special needs or unique or extenuating circumstances;

9.4.1.2 The requested exception will not fundamentally alter the sport;

9.4.1.3 The requested exception will not heighten risk to the student athlete or others; and

9.4.1.4 The requested exception will not place opponents at a disadvantage.

9.4.2 The request shall be on the form approved by the Board and it shall include:

9.4.2.1 The playing rule or rules at issue;

9.4.2.2 The exception that the student athlete requests; and

9.4.2.3 Documentation to support the four conditions in subsection 9.4.1.

9.4.3 An appearance by the student athlete and the student athlete's parent, guardian, or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.

11 DE Reg. 1632 (06/01/08)

15 DE Reg. 69 (07/01/11)

19 DE Reg. 1085 (06/01/16)

22 DE Reg. 469 (12/01/18)

23 DE Reg. 1024 (06/01/20)

24 DE Reg. 538 (12/01/20)

10.0 Appeal Procedure to the DIAA Board of Directors

10.1 Decisions of the Executive Director or Sportsmanship Committee, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the DIAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics.

10.1.1 Initiation of an Appeal to the DIAA Board

10.1.1.1 Whenever a right of appeal of a decision to the DIAA Board of Directors is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty (30) calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

- 10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten (10) calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1007.
- 10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.
- 10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the next meeting agenda of DIAA.
- 10.1.1.6 An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.
- 10.1.2 Record of Prior Proceedings
 - 10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.
 - 10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.
 - 10.1.2.3 The record shall be filed with the Executive Director within ten (10) calendar days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.
- 10.1.3 DIAA Board Hearing Procedures for Appeals
 - 10.1.3.1 Record Review
 - 10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the DIAA Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten (10) calendar days after the notice was filed.
 - 10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten (10) calendar days before the consideration date, unless otherwise directed.
 - 10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.
 - 10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the DIAA Board's decision shall be based on the existing record, the written statements and oral argument, if any.
 - 10.1.3.2 Evidentiary Hearings
 - 10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the DIAA Board otherwise decides to receive additional evidence.
 - 10.1.3.2.2 The Chairperson or his/her designated representative shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.
 - 10.1.3.2.3 The DIAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.
 - 10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.
 - 10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.
 - 10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the DIAA Board.

- 10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the DIAA Board.
- 10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
- 10.1.3.2.9 Any party to a proceeding before the DIAA Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.
- 10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the DIAA Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the DIAA Board members present for the hearing unless otherwise directed.
- 10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.
- 10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) calendar days of the hearing.

11 DE Reg. 1632 (06/01/08)

15 DE Reg. 69 (07/01/11)

11.0 Appeal to the State Board of Education

Any party to a controversy involving the athletic rules and regulations, including a waiver thereof, may appeal to the State Board of Education by setting forth such grievance in a petition. The petition or notice of appeal shall be served on the Secretary of Education no later than thirty (30) calendar days after receipt of the decision. In addition, a copy of the petition or notice of appeal shall be served on the Executive Director of DIAA by certified or registered mail. Any decision shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See 14 Del.C. §312 and the State Board of Education Procedures Manual). An appeal shall not stay the decision of the DIAA Board of Directors.

1 DE Reg. 725 (12/01/97)

6 DE Reg. 280 (09/01/02)

7 DE Reg. 1692 (06/01/04)

9 DE Reg. 117 (07/01/05)

11 DE Reg. 1632 (06/01/08)

15 DE Reg. 69 (07/01/11)

19 DE Reg. 1085 (06/01/16)

22 DE Reg. 56 (07/01/18)

22 DE Reg. 469 (12/01/18)

23 DE Reg. 376 (11/01/19)

23 DE Reg. 1024 (06/01/20)

24 DE Reg. 538 (12/01/20)

25 DE Reg. 706 (01/01/22) (Final)