

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 1006

FINAL

REGULATORY IMPLEMENTING ORDER

1006 Delaware Interscholastic Athletic Association (DIAA)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). A technical error is being changed within this regulation related to the name of the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education (see Section 11.0). Two additional nonsubstantive changes were made (see Section 7.0 and Section 9.0).

Notice of the proposed regulation was not published in the *News Journal* and the *Delaware State News* as it is exempt pursuant to 29 **Del.C.** §10113 from the procedural requirements of the APA. Therefore, there is no Exhibit A with this regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) to correct a technical error to the name of the State Board of Education Manual for the Conduct of Hearings Before the State Board of Education (see Section 11.0). Additionally, two nonsubstantive changes were made (see Section 7.0 and Section 9.0).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1006 Delaware Interscholastic Athletic Association (DIAA) amended hereby shall be in the form attached hereto as Exhibit "B", 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 of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on May 19, 2016. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of May 2016.

Department of Education

Steven Godowsky, Secretary of Education

Approved this 19th day of May 2016

State Board of Education

Teri Quinn Gray, Ph.D., President (not present)

Jorge L. Melendez, Vice President

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

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 unless the context clearly indicates otherwise:
- "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.
- "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.
- "Legally in attendance"** means present at school as determined by a pre-established written policy adopted by the local school board or governing body of the school.
- "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.
- "School day(s)"** shall mean actual school attendance days during the regular academic school year including a partial day that children are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.
- "State Board"** means the State Board of Education of the State of Delaware pursuant to 14 Del.C. §104.

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

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

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)

3.0 DIAA Board of Directors

- 3.1 Conflict of Interest: Any member of the Board of Directors 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 DIAA Board standing committees include: Rules and Regulations, Officials, Sports Medicine; Sportsmanship and one for each DIAA recognized sport. The Chairperson of the DIAA Board may appoint additional short term committees with specific assignments when deemed necessary.
- 3.2.1.1 The committee for each DIAA recognized sport shall have, in writing, procedures for determining tournament berths and selecting tournament sites. Such procedures shall be on file with the Executive Director and sent to the administrative head of each member school.
- 3.3 Committee Membership
- 3.3.1 The Chairperson of the DIAA Board of Directors and the Executive Director shall be *exofficio* members of all committees. Committee membership shall be geographically representative and committee membership may include administrators, athletic directors, coaches, local school board members, officials and public members.
- 3.3.2 The Chairperson of the DIAA Board of Directors shall appoint individuals to serve as committee chairpersons. The individuals appointed shall serve for an indefinite period of time. The Chairperson of the

Board, however, with the advice of the Executive Director, in his or her discretion, may remove a committee chairperson.

- 3.3.3 The Committee Chairperson, with the advice and consent of the Executive Director, shall appoint individuals to serve on the committee. The individuals so appointed shall serve for an indefinite period of time. The Committee Chairperson, however, with the advice and consent of the Executive Director, may, in his or her discretion, remove individuals from the committee.

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 3.2.1 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 too 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 3.2.1, 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.

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

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. 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).

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 ~~imposes~~ 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 1006 8.0 and 1007 2.1.

9 DE Reg. 117 (7/1/2005)

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

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

- 9.1.1 The DIAA 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 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 alone, whether by the student athlete, his/her family or school, shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant (the student, his/her parents or guardians, principal, headmaster or other affected party) to show extenuating circumstances warranting waiver.
- 9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient data to make it possible to reach a decision without further investigation. It is not the duty of the Executive Director or the DIAA Board to produce or collect information.
- 9.1.4 Waiver requests ~~would~~ should be filed promptly when it becomes apparent to the student, principal, headmaster or other affected party, that a waiver will be required. In any event, all requests for a waiver of the rules, with all documentation complete, must be received by the Executive Director at least 21 calendar days before the next regularly scheduled meeting of the DIAA Board in order to be placed on the agenda for that meeting.
- 9.1.4.1 Notwithstanding this requirement, the Chairperson of the DIAA Board may at his/her discretion add a waiver request to an agenda in an emergency situation. Failure to file a waiver request in a timely manner when all information is available shall not be considered an emergency situation.
- 9.1.5 The applicant is entitled to a hearing on his/her waiver request. Waiver hearings shall be conducted in an informal manner that affords all parties the opportunity to present all information and all relevant arguments.
- 9.1.5.1 The DIAA 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.
- 9.1.5.2 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.
- 9.1.5.3 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.

9.1.5.4 Any document introduced into evidence at the hearing shall be marked by the 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 Board members present for the hearing unless otherwise directed.

9.1.5.5 Any request by the DIAA Board for additional information pertaining to a waiver request shall be promptly supplied by the affected students, coaches, and member schools.

9.1.5.6 DIAA shall provide a stenographic reporter at a hearing at its own expense.

9.1.6 The DIAA Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, a decision made on a waiver request shall be effective immediately.

9.1.7 The DIAA Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty (20) days of the hearing.

9.2 Eligibility Rule Waiver Request

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/her family, or 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/her family or 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 DIAA 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 to the involved member school's principal, headmaster or their designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student or the administrator, 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 DIAA 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 DIAA Board in making an informed decision, the waiver request shall include the student'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;

9.2.2.2.2 Attendance records for the last two (2) 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 Any documentation specifically required by the rule;

9.2.2.2.5 Medical records (if applicable);

9.2.2.2.6 Legal documentation (if applicable);

9.2.2.2.7 IEP's (if applicable); and

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

9.2.2.2.9 For waiver requests involving 1008.2.4 or 1009.2.4, documentation of official withdrawal from the sending school and official registration or acceptance to the receiving school.

9.2.3 An appearance by the student and his or her parent, guardian or Relative Caregiver before the DIAA Board is mandatory on requests for an eligibility waiver. 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, regulation, guideline, policy or procedure of DIAA 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.

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

9.3.3 An appearance by the Principal or Headmaster or his/her designee or other individual requesting the non eligibility waiver is optional. If the Principal or Headmaster or his/her designee or other individual

requesting the non eligibility waiver choose to appear before the DIAA Board he/she must notify the Executive Director of his/her intent to do so at the time the request for waiver is filed. Otherwise, the principal or his/her designee, or other individual, may attend the meeting but may not be permitted to address the DIAA Board.

- 9.3.4 If the waiver requested would affect more than one member school, the waiver 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.

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

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

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

- 44.4 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 Manual for the Conduct of Hearings Before the State Board of Education~~ Procedures Manual). An appeal shall not stay the decision of the DIAA Board of Directors.

1 DE Reg. 725 (12/1/97)
6 DE Reg. 280 (9/1/02)
7 DE Reg. 1692 (6/1/2004)
9 DE Reg. 117 (7/1/2005)
11 DE Reg. 1632 (06/01/08)
15 DE Reg. 69 (07/01/11)
19 DE Reg. 1085 (06/01/16) (Final)