

April 20, 2017

Tina Shockley
Education Associate – Policy Advisor
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 20 DE Reg. 762/14 DE Admin. Code 1009 [DOE Proposed DIAA High School Interscholastic Athletics Regulation (April 1, 2017)]

Dear Ms. Shockley:

The Governor’s Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend several regulations covering student participation in high school sports in consultation and cooperation with the Delaware Interscholastic Athletic Association (DIAA). Council would like to share the following observations.

1. Section 2.4.4.1.4.2 disallows a student who participated in athletics and then transfers more than one time in his first two years of eligibility from playing any sport for 90 days. While barring the student from playing the same sport is intuitive, barring the student from playing a new sport is not. If one assumes that athletic activity is advantageous to the wellbeing of a student, it is excessive to disallow a student from engaging in all athletic activities unrelated to sports played at the former school.

2. Section 2.4.7 disallows a student transferring to a “choice” school in grades 10-12 from participating in any sport offered at the former school even if the student did not participate in any sports at the former school. The justification for this ban is difficult to understand if one assumes that athletic activity is advantageous to the wellbeing of a student. If a student played no sports at the prior school, it makes little sense to ban the student from playing in any sport offered by the prior school for a full school year. Students should not be penalized for opting to attend a “choice” school as allowed by law.

3. Also in section 2.4.7, the DIAA strikes the word “athletics”. To obviate any implication that the DIAA is regulating non-athletic activities in the standards, the DIAA should preferably retain the word “athletics”.

4. Section 2.7.3. authorizes the DIAA to grant hardship waivers based on the cap on years of participation. Council has two concerns with this section. First, the U.S. DOE Office for Civil Rights publicizes many advantages to participation in athletics for students with disabilities. See attached January 25, 2013 OCR guidance at 1. The IDEA encourages schools to include extracurricular activities (including athletics) in IEPs. See 34 C.F.R. §300:320(a)(4) and 14 DE Admin Code 925.20.1.4.2. The

IEP team would therefore be a primary decision-maker in the context of participation in athletics. This concept is omitted from the regulation. By analogy, each district typically has a transportation director who determines eligibility for a school bus and assignment to a bus stop. Since transportation is a special education related service, the IEP team (generally in consultation with the transportation director) determines how transportation will be provided for special education students. In the event of disagreement, the IEP team decision prevails. The same concept applies to participation in IEP-listed athletics. The IEP team is the primary decision-maker concerning participation in IEP-listed athletics. Second, imposing a “burden of proof” on a student with an IEP to justify participation in athletics is a foreign concept in special education. The IEP team would deliberate and make a decision typically by consensus. There is no “burden of proof” in the IEP context.

5. The DIAA is involved in the unified sports program. Cf. House Bill No. 175 from 148th General Assembly for description and attached articles. The regulation does not address how participation by students with disabilities is affected by participation in unified sports. For example, if a student with a disability plays in one unified sports scrimmage, does that count for one year of the participation cap under §2.7? The DIAA could consider inserting an exception for students with disabilities participation in unified sports from counting towards the participation cap in §2.7.

Thank you for the opportunity to share our observations with you. Please contact me or Wendy Strauss at the GACEC office if you have any questions on our comments.

Sincerely,

Dafne A. Carnright
Chairperson

DAC:kpc

CC: The Honorable Susan Bunting, Secretary of Education
Dr. Teri Quinn Gray, State Board of Education
Thomas Neubauer, DIAA
Mary Ann Mieczkowski, Department of Education
Mr. Chris Kenton, Professional Standards Board
Matthew Korobkin, Department of Education
Terry Hickey, Esq.
Valerie Dunkle, Esq.

Attachments