



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Lookerman St., Dover, DE 19904
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September 21, 2018

Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, DE 19901

RE: 22 DE Reg. 186/14 DE Admin. Code 1008 [DOE Proposed DIAA Junior High and Middle School Interscholastic Athletics Regulation (September 1, 2018)]

Dear Secretary Bunting:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Education (DOE) proposal to amend Delaware Code in reference to Junior High and Middle School interscholastic athletics. Council **endorses** the proposed changes as they will assist in limiting life-altering head injuries and promote safe practices among student athletes. In addition to our endorsement, we would also like to offer the following observations.

The amendments include adding five defined terms to subsection 1.1; revising the Junior High and Middle School Transfer Rule (subsection 2.4), Passing Work Rule (subsection 2.6), and Years of Participation Rule (subsection 2.7) to be consistent with changes to 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics that went into effect in 2017; clarifying the concussion protocol in Section 3.0; specifying the required concussion training course for coaches in Section 7.0; adding the requirement that all football coaches complete Heads Up Football training to subsection 7.4; and revising subsection 7.6, which concerns coaching out of season, in accordance with Senate Concurrent Resolution No. 79.

The proposed regulations provide a rational approach to school transfers, in an attempt to diminish transfers that are motivated by obtaining athletic advantage. Generally, any student who transfers for athletic advantage must wait 90 days from enrollment to participate in any sports. There is an existing waiver process in Section 1006, 9.0 that allows the DIAA (Delaware

Interscholastic Athletic Association) Board to waive any rule. The proposed regulation lists a number of exceptions to the waiver process, to cover almost any situation where the circumstances of the transfer clearly do not relate to athletics, such as homelessness, Division of Services for Children, Youth and their Families (DSCYF) custody, changes in custody, legitimate moves to new districts, court order and transfers due to Unsafe School Choice.

The language in 2.4.3.1 is very awkward, particularly the cross-reference to Section 1006 and the hardship process. The language could be amended to more directly state that a student who meets one of the exceptions listed in this regulation does not have to file a waiver request under Section 1006, 9.0. It is unclear why the language “including hardship” is added in the third line and it may confuse individuals seeking a financial hardship waiver under 2.4.4 of Section 1008, who are required to file for a waiver.

None of the exceptions apply if the primary motivation of the student is to gain athletic advantage. A student whose primary motivation is advantage can still ask for a waiver of the transfer rule. However, there is no articulated process governing how a district would be able to ascertain motivation, or how an athlete would prove that the transfer was not motivated by the desire to gain advantage if someone alleged that it was. It is easy to envision how this could descend into a rumor-driven mess and the lack of due process could render this section unenforceable.

Section 2.4.2.1

student who

has previously participated in interscholastic athletics that transfers to a DIAA member school shall **be ineligible in all sports for a period of 90 school days**

Section 2.4.6.2 penalizes any athlete attending a school out of their feeder pattern through School Choice who then transfers to another school outside of their feeder pattern during the school year by rendering them ineligible for the entire first school year. However, such students falling under the exceptions under 2.4.3 are not subject to this rule.

The proposed regulation also rewrites the section covering Years of Participation. The rule prohibits organized scholastic sports below 6th grade. The rule places restrictions on participation in football for 6th graders and places a six semester limit after the commencement of 6th grade and restricts the number of sports in which a student can participate.

Section 2.7.3 discusses the waiver process for the Years of Participation rule based on hardship. This rule does not discuss disability-related reasons for a hardship waiver, listing illness, injury or accidents but not disability. Section 2.7.3.1.2 indicates that “there must be a clear and direct causal relationship between the hardship condition and the failure of the student to complete academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of the student’s opportunities to participate in a particular sport.” Section 2.7.3.1.3 places the burden on the student to prove the connection and severity, and indicates that the family must prove that it sought assistance to ameliorate the effects of the hardship condition. Councils may want to consider clarifying language that disability-related hardships are covered by this section and that amelioration requirements do not apply to disability-related hardships.

Finally, the proposed regulation amends the Concussion Protocol. In Section 3.2.1, The rule requires that any athlete suspected of sustaining a concussion be immediately removed from play and evaluated by a Qualified Health Care Professional (defined in 1.1 as a licensed doctor,

school nurse, nurse practitioner, Physician Assistant or athletic trainer). If a concussion is confirmed or not ruled out, the athlete is referred to a physician and cannot play until cleared in writing on the DIAA Acute Concussion Evaluation and Return to Play form. Failure to comply renders the athlete ineligible and exposes the school to penalties.

Section 3.4.1 requires the presence of a Qualified HealthCare Professional at all interscholastic football games. Failure to comply results in a \$250 fine.

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,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: Dr. Dennis L. Loftus, State Board of Education
Mary Ann Mieczkowski, Department of Education
John Wolgamot, State Board of Education
Mr. Chris Kenton, Professional Standards Board
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