

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(b)(1)d (14 **Del.C.** §§122(b)(15) & 303(b)(1)d)

PROPOSED

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del. C. §122(d)

1028 Student Athlete Eligibility: Enrollment and Attendance

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303(b)(1)d, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance. The regulation sets forth the enrollment and attendance requirements for students to be eligible to participate in interscholastic athletics. The proposed regulation includes specifying the content of the regulation in Section 1.0; adding defined terms to, and incorporating defined terms from existing regulations into, Section 2.0; adding the purpose of the Enrollment Rule to subsection 3.1; adding language concerning waivers to subsections 3.2.1 and 3.2.2; adding subsection 3.5, which concerns students who enroll in a school initially under a permanent change of station (PCS); adding proposed subsection 3.6, which concerns students who are not legally enrolled in a Delaware public school due to homelessness; and adding subsection 4.1, which concerns the purpose of the Attendance Rule. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsections 2.3.1, 2.3.2, and 2.3.3 of 14 **DE Admin. Code** 1008 and subsections 2.3.1, 2.3.2, 2.3.3, and 2.3.4 of 14 **DE Admin. Code** 1009, except that "tryout" has been added to subsection 3.2 and proposed subsection 3.3 includes clarification changes. Proposed Section 4.0 is formerly subsections 2.3.5, 2.3.6, and 2.3.7 of 14 **DE Admin. Code** 1008 and subsections 2.3.6, 2.3.7, and 2.3.8 of 14 **DE Admin. Code** 1009, except that "tryout" has been added to subsections 4.2 and 4.3.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation will help improve student achievement as measured against state achievement standards by setting forth enrollment and attendance requirements for students to be eligible to participate in interscholastic athletics.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns eligibility requirements for students and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation will help to help ensure that all students' health and safety are adequately protected. Proposed subsection 4.2.2 mandates that a student who is not in attendance at school due to illness or injury is not permitted to participate in interscholastic athletics.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation will help ensure students' legal rights are respected by including additional language that is consistent with 14 **Del.C.** §§401-414 (School District Enrollment Choice Program), 14 **Del.C.** §§160A-177A (Interstate Compact on Education for Children of Military Families), and 42 U.S.C. §11434a(2) (McKinney-Vento Education for Homeless Children and Youths Act).

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such

nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 Del.C. §304).

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 Del.C. §304).

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The new regulation is consistent with, and not an impediment to, the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the new regulation? There is not a less burdensome method for addressing the purpose of this new regulation.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The new regulation concerns eligibility requirements for students. There is no cost to the state or local school boards for complying with the new regulation.

1028 Student Athlete Eligibility: Enrollment and Attendance

1.0 Content

In accordance with 14 Del.C. §303, this regulation sets forth the eligibility to participate in interscholastic athletics at the middle and high school levels for students who enroll in and attend Member Schools.

2.0 Definitions

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

"Contest" means a formal competition in which students or school teams compete to determine a winner.

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

"Practice" means working on skills for a particular sport within a single team at a Member School as guided by coaches and includes team workouts and inner-team scrimmages.

"School day" means an actual school attendance days during the regular academic school year, including a partial day that students are in attendance at school for instructional purposes as adopted by the school district or governing body of the school. School day does not weekends, holidays, and summer school.

"Scrimmage" means an informal competition between schools in which a final score is not kept, the time periods are permitted to be modified, the results of the competition are not reported to the media, the coaches are permitted to interrupt the play to provide instruction, and the competition is strictly for practice purposes.

"Tryout" means a demonstration of skills to make a team in order to be eligible to practice.

"Student with a disability" means a "child with a disability" as that term is defined in 14 DE Admin. Code 922 or a qualified person with a disability under Section 504 of the Rehabilitation Act of 1973.

3.0 Eligibility: Enrollment

3.1 Purpose of the Enrollment Rule - The purpose of the Enrollment Rule is to promote loyalty and school spirit which lends itself to cohesion of the student body, to help promote amateurism by drawing student athletes only from each school's student population, to avoid professionalism and over-emphasis on student athletes, and to discourage team-shopping.

3.2 Enrollment Rule - A student shall be legally enrolled in the Member School which they represent in order to participate in a tryout, practice, scrimmage, or contest. A student who attends 2 different schools during the regular school day shall be eligible to participate only at the school at which the student is receiving instruction in the core academic areas and is satisfying the majority of graduation requirements, not at a school at which the student receives specialized educational instruction such as vocational training. A student shall not participate in a tryout, practice, scrimmage, or contest during the time an in-school or out-of-school suspension is in effect or during the time the student is assigned to an alternative school for disciplinary reasons.

3.2.1 A waiver of the Enrollment Rule does not mean that a student athlete can automatically participate in an interscholastic tryout, practice, scrimmage, or contest with a Member School in which the student is not legally enrolled. If a waiver of the Enrollment Rule is granted, the school that the student athlete wishes to represent determines whether to allow the student athlete to participate in an interscholastic tryout, practice, scrimmage, or contest as a representative of the school. DIAA does not have the authority to

authorize a student athlete to participate in interscholastic athletics as a representative of a school in which the student athlete is not legally enrolled.

3.2.2 A request for a waiver of the Enrollment Rule shall be approved by the Superintendent or the Head of School of the school that the student athlete wishes to represent before the request is submitted to DIAA. Any such waiver request that is not approved by the Superintendent or Head of School will be deemed incomplete by DIAA and will not be processed by DIAA.

3.3 A student with a disability who is placed in a school or program by the student's school district or charter school shall be eligible to participate in interscholastic athletics as set forth in subsections 3.3.1 through 3.3.4. Subsection 3.3 does not apply to students who are placed in alternative schools or programs for disciplinary reasons through the Comprehensive School Discipline Improvement Program (14 Del.C. §§ 1601 - 1607). For the purpose of subsection 3.3, campus means a contiguous land area containing 1 or more school buildings.

3.3.1 If the school or program in which the student is placed sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program in which the student is placed.

3.3.2 If the school or program in which the student is placed does not sponsor the interscholastic sport in question and the student is served in a regular school for all or part of the school day, the student shall be eligible to participate only at that regular school.

3.3.3 If the school or program in which the student is placed does not sponsor the interscholastic sport in question, the student is served exclusively in the school or program, and the school or program is located on the campus of a regular school, the student shall be eligible to participate only at the regular school on the same campus.

3.3.4 If the school or program in which the student is placed does not sponsor the interscholastic sport in question, the student is served exclusively in the school or program, and the school or program is not located on the campus of a regular school, the student shall be eligible to participate only at the regular school designated to serve the school's or program's students. A school district or charter school that administers schools or programs in which a student with a disability may be placed and that has multiple regular schools determines the regular school at which the student may participate in interscholastic athletics.

3.4 Enrollment Requirements for the School District Enrollment Choice Program

3.4.1 Pursuant to 14 Del.C. §407(a)(2), a student who is enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program shall remain enrolled in the school for a minimum of 2 years. A waiver request is not required and the student is not ineligible under this subsection if 1 of the exceptions as provided in 14 Del.C. §407(a)(2) applies or the student's enrollment in the school is terminated as provided in 14 Del.C. §407. Even if a waiver request is not required and the student is not ineligible under this subsection, a waiver request may be required and the student may be ineligible under the Transfer Rule.

3.4.2 Pursuant to 14 Del.C. §506(d), a student who is in their first year of attendance at a charter school shall remain enrolled in the charter school for a minimum of 1 year. A waiver request is not required and the student is not ineligible under this subsection if good cause exists as provided in 14 Del.C. §506(d).

3.5 Consistent with 14 Del.C. §§ 160A-177A (Interstate Compact on Education for Children of Military Families), if a Member School has an insufficient number of enrolled students to form a team in a particular sport and the school district decides to allow a student who has enrolled in the school initially under a permanent change of station (PCS) order to participate in a tryout, practice, scrimmage, or contest on a team at another school within the school district, the student is eligible to participate in a tryout for the team, a practice with the team, and scrimmages and contests against other school teams and is not required to submit a waiver request. For the purpose of this regulation, permanent change of station (PCS) means the assignment or transfer of a military service member to a different permanent duty station, to include relocation to place of retirement, when retirement is mandatory, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new permanent duty station, or direct the military service member to return to the old permanent duty station.

3.6 If the student is not legally enrolled in a Delaware public school due to homelessness as defined in the McKinney-Vento Education for Homeless Children and Youths Act, 42 U.S.C. §11434a(2), a waiver of the Enrollment Rule is not required and the student shall be eligible to participate in a tryout, practice, scrimmage, or contest at the Delaware public school in which the student seeks to enroll.

4.0 Eligibility: Attendance

- 4.1 Purpose of the Attendance Rule - The purpose of the Attendance Rule is to help ensure that student athletes adhere to their school's attendance policy so that they maintain the academic standard required for interscholastic athletic participation and to promote graduation in a timely manner.
- 4.2 Attendance Rule
- 4.2.1 A student shall be legally in attendance at school in order to participate in a tryout, practice, scrimmage, or contest except when excused by proper school authorities in accordance with pre-established written school policy. For the purpose of the Attendance Rule, legally in attendance means present at school as determined by a pre-established policy adopted by the local school board or governing body of the student's school.
- 4.2.2 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a tryout, practice, scrimmage, or contest on that day.
- 4.2.3 A student who fails to complete a semester or is absent for 1 or more semesters for reasons other than personal illness or injury shall be ineligible for 90 school days from the student's reentry to school.
- 4.3 An ineligible student who participates in a tryout, practice, scrimmage, or contest in violation of subsection 4.2 shall, when the student regains eligibility, be prohibited from trying out, practicing, scrimmaging or competing for an equivalent number of days.

27 DE Reg. 740 (04/01/24) (Prop.)