

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))  
14 **DE Admin. Code** 1001

### FINAL

### ORDER

#### 1001 Participation in Extra Curricular Activities

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Education ("Department") proposed to repeal 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities. The regulation directed school districts and charter schools to establish their own academic eligibility criteria for participation in extracurricular activities except for interscholastic athletics. Academic eligibility criteria for middle and high school students' participation in extracurricular activities is established by the Delaware Interscholastic Athletic Association (DIAA) Board and Delaware public schools, including school districts and charter schools, are required to comply with such requirements pursuant to 14 **Del.C.** § 304(3)).

Notice of the proposed repeal of the regulation was published in the *Register of Regulations* on November 1, 2023. The Department received written submittals from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD"). GACEC commented that "[w]hen school systems have an eligibility requirement for a nonacademic program that is not strictly related to an ability to participate in the program, even with reasonable accommodations, it may rise to discrimination if the requirement tends to screen out students with disabilities." SCPD commented that "Delaware's DIAA must offer an equal opportunity to students with disabilities to participate in sports, which may include the requirement to provide reasonable accommodations such as changes to policies" and "students with IEPs must be afforded an equal opportunity to participate in extracurriculars, including with supplementary aids and services deemed appropriate and necessary by their IEP teams." GACEC and SCPD each recommended that the Department "maintain a modified statement of non-discrimination" or "incorporate such a statement elsewhere in the DIAA regulations."

#### II. FINDINGS OF FACTS

The Department considered the two written submittals and determined not to make any changes as a result. The Department will submit the written submittals to the DIAA Board for consideration.

The Department finds that when 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities was adopted in 1997, the DIAA had not been created. DIAA was established in 2002 and the Board adopted regulations that establish the academic eligibility criteria for middle and high school students' participation in extracurricular activities. In accordance with 14 **Del.C.** §122(e), the Department finds that 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities is unnecessary. The Department also finds that the comment in 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities is a non-regulatory note that cites a Federal regulation. The Federal regulation itself stands. Accordingly, the Department finds that it is appropriate to repeal 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities.

#### III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities. Therefore, pursuant to 14 **Del.C.** §§122(a) and 122(e), 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities, attached hereto as Exhibit A, is hereby repealed.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities repealed hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities in the *Administrative Code of Regulations* for the Department.

#### V. EFFECTIVE DATE OF ORDER

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

**IT IS SO ORDERED** the 12th day of December 2023.

**Department of Education**

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 12th day of December 2023.

**1001 Participation in Extra Curricular Activities**

**1.0 Academic Eligibility Criteria**

~~Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.~~

~~Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.~~

**1 DE Reg. 173 (08/01/97)**

**6 DE Reg. 279 (09/01/02)**

**10 DE Reg. 1433 (03/01/07)**

**15 DE Reg. 1714 (06/01/12)**

**23 DE Reg. 113 (08/01/19)**

**27 DE Reg. 522 (01/01/24) (Final)**