

**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)

FINAL

ORDER

1028 Student Athlete Eligibility: Enrollment and Attendance

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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.

Notice of the proposed regulation was published in the *Register of Regulations* on April 1, 2024. The DIAA Board received written submittals from Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") and Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). Mr. Shrader commented that the SCPD is concerned about proposed subsection 3.3. He commented that "some students are placed in alternative schools through the IEP process, and not for disciplinary reasons," the proposed language does not clarify that such students are not excluded from participation in interscholastic sports, and the proposed language can be read to exclude any student placed in an alternative school. Ms. Fisher commented that the GACEC is concerned about proposed subsection 3.3 and suggests that the language be revised "to reflect that a. some students are placed in alternative schools for reasons other than discipline and should not be excluded; and b. individual considerations may allow a student with a disability who has been placed in an alternative school for discipline to participate in interscholastic sports." Ms. Fisher further commented that "[c]ategorical exclusion of students placed in alternative schools for disciplinary reasons can further marginalized students already subject to discriminatory disciplinary practices."

**II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS
REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE**

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

On June 13, 2024, the DIAA Board considered SCPD's and GACEC's written submittals. The DIAA Board found that there may be validity to the public comments, but it is not aware of instances in which students are referred to alternative programs for non-disciplinary reasons. The Board noted that it would like GACEC or SCPD to provide it additional information about instances in which this occurs. In the meantime, the Board noted that timeliness is an issue as DIAA's goal was to implement these regulations prior to the start of the fall sports season. The Board noted that republishing the regulations with changes will negatively impact more students than those students potentially affected by Regulation 3.3. For this reason, the Board voted to move forward with the regulations as proposed but noted that it would like to engage with GACEC and SCPD further to determine if their proposed changes should be addressed in a future regulatory change. The DIAA Board determined not to make any further changes as a result of the written submittals and voted to propose 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school

levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance.

IV. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance subject to the State Board of Education's approval. On June 20, 2024, the State Board of Education approved adopting 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303(b)(1)d, 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance, attached hereto as Exhibit A, is hereby adopted.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance in the *Administrative Code of Regulations* for the Department.

VI. 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 20th day of June, 2024.

Department of Education

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

Approved this 20th day of June, 2024.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Harvey Kenton, Jr.

/s/ Deborah Stevens, Vice President

/s/ Provey Powell, Jr.

/s/ Candice Fifer

/s/ Wali W. Rushdan, II

/s/ Meredith L. Griffin, Jr.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

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 **[include]** 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.

28 DE Reg. 120 (08/01/24) (Final)