

**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

1029 Student Athlete Eligibility: Transfers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 122(b) and 303(a), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department") is amending 14 **DE Admin. Code** 1029 Student Eligibility: Transfers. The regulation sets forth the transfer requirements for students to be eligible to participate in interscholastic athletics. The Board is simultaneously proposing to repeal existing sections from 14 DE Admin. Code 1009 regarding transfers and incorporating the new transfer regulations here. The proposed regulations specify the content of the regulation, definitions, and purpose in Section 1.0-3.0. Section 4.0 spells out when a student may transfer without consequence as well as the consequences for transferring other times, including periods of ineligibility. Section 5.0 specifies the exceptions to the transfer rule. These regulations are consistent with Senate Bill 281, a bill recommended by the DIAA Task Force.

Notice of the proposed regulation was published in the *Register of Regulations* on May 1, 2024. The DIAA Board of Directors received one written submittal from Governor's Advisory Council for Exceptional Citizens (GACEC), which commented that the "regulation does not address the circumstance in which a student with disabilities transfers schools for educational reasons, pursuant to an IEP or because the school offers the needed educational services or supports."

**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 the written submittal. The DIAA Board found that a student with an IEP could seek a waiver and be granted eligibility immediately. DIAA's primary purpose is to prioritize education and ensure fair play in interscholastic athletics. The Board has historically granted waivers to students seeking to transfer for reasons related to IEPs or 504 plans, and this regulation would not change that. The DIAA Board decided not to make changes as a result of the written submittal and voted to propose **14 DE Admin. Code 1029 Student Athlete Eligibility: Transfers**, 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 high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend **14 DE Admin. Code 1029 Student Athlete Eligibility: Transfers**.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code 1029 Student Athlete Eligibility: Transfers** subject to the State Board of Education's approval. On June 20, 2024, the State Board of Education approved amending **14 DE Admin. Code 1029 Student Athlete Eligibility: Transfers**. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, **14 DE Admin. Code 1029 Student Athlete Eligibility: Transfers**, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1029 Student Athlete Eligibility: Transfers adopted hereby shall be in the form attached hereto as Exhibit "A," and said regulation shall be cited as 14 **DE Admin. Code** 1029 Student Athlete Eligibility: Transfers in the Administrative Code of Regulations for the Department.

VI. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) 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/ Rev. 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).**

1029 Student Athlete Eligibility: Transfers

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 transfer schools.

2.0 Definitions

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

"Athletic advantage" means any transfer where the primary reason for the student's transfer was for any of the following reasons: to seek a superior team; to seek a team more compatible with the student's abilities; dissatisfaction with the student's position or playing time; to follow a coach to another school to which the coach has transferred; dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics; to avoid disciplinary action imposed by another state athletic association; or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

"HIB transfer" Delaware school bullying prevention law, a state law that public schools are required to follow and non-public schools are encouraged to follow, harassment, intimidation and bullying (HIB) are matters that are investigated and addressed by the school. The DIAA does not hold hearings to determine whether a student was bullied or has suffered from mental health issues. A "HIB transfer" will exist when a school, after investigating a HIB complaint, determines that the proper action to remediate the complaint is an alternative placement or a school transfer.

"Participate" or "participated" means having played or joined in an interscholastic tryout, practice, scrimmage, or contest.

"Receiving school" means the school a student transfers to after leaving their previous school.

"Sending school" means the school a student transfers from to go to a different school.

"Transfer" means the student has officially withdrawn from the sending school and has officially enrolled in the receiving school in accordance with the receiving school's established registration process.

3.0 Purpose

The purpose of the transfer rule is to deter students from transferring schools for athletic advantage, to help discourage recruitment, and to reduce the opportunity for undue influence to be exerted by persons who seek to benefit from a student's athletic talent. Transfers strictly for athletic reasons undermine the stability of sports programs, elevate athletics over academics, lead to disparities in competitiveness, and erode the level playing field that the DIAA seeks to foster. This rule is designed to discourage transfers for athletic reasons, multiple transfers, and transfers after a sports season has begun, by imposing defined periods of ineligibility for those who transfer after the 1 allowable period.

4.0 Transfer Rule

4.1 A student who transfers schools shall be eligible immediately upon registration at the receiving school provided the student meets all other DIAA eligibility requirements and:

4.1.1 Has not participated in interscholastic athletics during the previous 180 school days;

4.1.2 Is released by the sending school;

- 4.1.3 Has completed the registration process at the receiving school; and
- 4.1.4 Is pursuing an approved course of study at the receiving school.
- 4.2 A student who has participated in interscholastic athletics at any high school level may transfer 1 time to a DIAA Member School without loss of eligibility if the following are met:
 - 4.2.1 The student's transfer takes place prior to the start of the earliest allowable start date of the fall sport's season of the student's third year of eligibility at the high school level; and
 - 4.2.2 The student does not participate in a contest in the same sport for different schools during the same school year.
- 4.3 If the student transfers more than 1 time or the transfer takes place after the earliest allowable start date of the fall sport season of the student's third year of eligibility at the high school level, the student will be subject to the periods of ineligibility listed below for all sports they participated in during the previous 180 school days at any level, not just varsity. The period of ineligibility will begin on the receiving school's first day of competition, for each team's published schedule.
 - 4.3.1 Students who transfer after the earliest allowable start date of the fall sport's season of the student's third year of eligibility at the high school level will be subject to a 30-day period of ineligibility or half the maximum number of regular season contests in that sport, whichever is less, for all sports they participated in during the previous 180 school days.
 - 4.3.2 Students who transfer a second or subsequent time will be subject to an additional 30-day period of ineligibility or half the maximum number of regular season contests, whichever is less, for all DIAA sanctioned sports in which the student participated during the previous 180 school days, and the loss of post-season eligibility.
 - 4.3.3 When calculating the period of ineligibility using the maximum number of contests, if there are an odd number of contests, DIAA will round down to the nearest whole number.
- 4.4 Transferring students may participate in a new sport without an ineligibility period.

5.0 Exceptions

- 5.1 Immediate eligibility, without serving the defined period of ineligibility will be granted for transfers resulting from the following:
 - 5.1.1 McKinney-Vento Act (Homeless Students). The transfer is the result of the student becoming homeless as defined in the McKinney-Vento Education for Homeless Children and Youths Act, 42 U.S.C. §11434a(2).
 - 5.1.2 Transfer Due to Court Action. The transfer is caused by an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.
 - 5.1.3 Relative Caregivers School Authorization. The transfer is based upon the submission of a Caregivers School Authorization in accordance with 14 **Del.C.** §202(f).
 - 5.1.4 Unsafe School Choice Policy. The student attends a persistently dangerous school or is the victim of a violent felony while in or on the grounds of a school in which the student is enrolled and the student opts to transfer to a safe school in the same school district in accordance with 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy.
 - 5.1.5 HIB Transfer.
 - 5.1.6 Transfer Because Sending School Closed or Dropped Sport/Athletic Program. A sending school drops its athletic program when it discontinues all of its interscholastic athletics sports programs. For this exception to apply, adequate documentation must be submitted to the receiving school and sent to the DIAA Executive Director for approval.
 - 5.1.7 Military Assignment. A student transferring in a situation where change in education and living arrangements is directly related to an order from any branch of the United States military service, including the reserve components.
 - 5.1.8 Bona Fide Change of Residence. A change of residence occurs when an out-of-state student changes residence and attends high school for the first time in Delaware or a Delaware student moves and is required to transfer to a new school as verified by the receiving school. A student shall not participate in interscholastic athletics following a change in primary residence unless it is made for a bona fide purpose. A bona fide purpose means that the change in primary residence is not for athletic purposes and meets all of the following criteria:
 - 5.1.8.1 The receiving school verifies and accepts the student.

- 5.1.8.2 The family move is a permanent change in the family's legal residence. The legal residence is that place in which the family's habitation is fixed and in which the student's custodial parent or legal guardian has the present intention to reside permanently.
- 5.1.8.3 The original residence must be abandoned by the student's family as a residence; that is sold, rented or disposed of as a residence, and must not be used as residence by any member of the family. Maintaining dual residency for the purpose of athletic eligibility will render the student ineligible.
- 5.1.8.4 The family move is to a new school district or school zone. A move within the current district where a student does not have to change schools will not be considered a bona fide change of residence.
- 5.1.8.5 Proof of a bona fide residence change includes utility bills, closing documents, voter registration, or other legal documentation. A driver's license alone will not serve as proof of bona fide residence change.

6.0 Documentation Tracking of Transfers

- 6.1 In order to become eligible to participate in interscholastic athletics at the receiving school, a student's DIAA Transfer Tracking Form shall be submitted as follows:
 - 6.1.1 The student's receiving school shall initiate the process by completing and sending the DIAA Transfer Tracking Form to the student's sending school; and
 - 6.1.2 The student's sending school shall complete the DIAA Transfer Tracking Form and send the completed form to the student's receiving school and the DIAA Executive Director for review.

7.0 Transfers under the School District Enrollment Choice Program (14 Del.C. Ch. 4)

- 7.1 Pursuant to 14 Del.C. §410(a), if a student was enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program during the preceding school year and the student transfers to and enrolls in grades 10, 11, or 12 at a different traditional public, vocational, or charter school outside of the student's feeder pattern through the program, the student shall be ineligible to participate in interscholastic athletic contests or competitions during the student's first year of enrollment at the receiving school.
- 7.2 For the purpose of Section 7.0, a student's feeder pattern consists of the public schools in which the student would normally be enrolled based on the student's place of residence.
- 7.3 If a student is ineligible under Section 7.0, the student may submit a waiver request.
- 7.4 The waiver, if granted, would still be subject to the periods of ineligibility listed in subsection 4.3.