

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)
14 **DE Admin. Code** 1024

PROPOSED

PUBLIC NOTICE

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

1024 DIAA Member Schools

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes amendments to 14 **DE Admin. Code** 1024 DIAA Member Schools. The regulation sets forth requirements for DIAA Member Schools in accordance with 14 **Del.C.** §301. The proposed amendments state that under DIAA regulations, students whose gender identity differs from their assigned sex at birth are eligible to participate on a team other than their assigned sex at birth. The proposed changes further note that member schools are responsible for making such eligibility determinations and must do so in compliance with Title IX (20 U.S.C. §§1681- 168). The proposed changes also increase member schools' annual membership fees to account for rising costs DIAA has born for hosting state post-season tournaments. Other grammar and style changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before September 3, 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 amended regulation help improve student achievement as measured against state achievement standards? Yes, the amended regulation was developed by the Board in conjunction with its Rules and Regulations Committee, which spent several months researching the issue of transgender participation in interscholastic sports. The proposed change will ensure more student-athletes are included. The fee change has no effect on students.

2. Will the amended regulation help ensure that all students receive an equitable education? Yes, see above. The purpose of the proposal is to facilitate equity.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? Yes, the regulation ensures that all member schools comply with federal law pertaining to gender equality. Additionally, the fee increase ensures DIAA can continue to appropriately staff post-season tournaments.

4. Will the amended regulation help to ensure that all students' legal rights are respected? Yes, see answers 1-4.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation grants the authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended 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 amended 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 amended regulation is consistent with and not an impediment to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.

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

burdensome method for addressing the purpose of this amended regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no expected cost to the state. Schools within the control of local school boards will have to pay an additional \$100 to retain membership in DIAA.

1024 DIAA Member Schools

1.0 Content

In accordance with 14 **Del.C.** §303, this regulation sets forth requirements for DIAA Member Schools, which include all public middle and high schools and such nonpublic middle and high schools in Delaware that elect to become Member Schools.

2.0 Definitions

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

"Administrative Head head" means the chief or head individual in charge of a DIAA Member School, traditionally referred to or generally known as the principal or headmaster.

"Board" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** Ch. 3.

"Department" means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

"DIAA" means the Delaware Interscholastic Athletic Association established pursuant to 14 **Del.C.** §301.

"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.

"Unified Sports" means a co-ed program that combines an approximately equal number of students with and without autism or intellectual disabilities on a sports team for training and interscholastic competition.

3.0 Process for Becoming a DIAA Member School

3.1 Full Member Schools: Any middle and secondary school located within the boundaries of the State and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, including nonpublic, private, and public schools, authorized by Title 14 of the Delaware Code, may become a full Member School of DIAA. Membership requires the payment of dues and a signed affirmation of the obligations of membership.

3.1.1 A full Member School is a non-voting member of DIAA and does not participate in its day-to-day governance. A full Member School may, at any time, make appropriate recommendations for policy action to the Board for its consideration.

3.1.2 Membership shall include all middle and secondary public schools participating in interscholastic athletics and such nonpublic schools that may elect to become full or associate members.

3.2 Associate Member School: Any school, not a full Member School, located within the boundaries of the State and containing grades 6 through 8, or 8 through 12, or any grouping of such grade levels, may apply for status as an associate Member School provided the applicant sets forth good cause and sufficient justification why such school cannot become a full Member School. The initial application may be submitted at any time but renewal applications shall be submitted to the DIAA office no later than May 1 of each year.

3.2.1 Associate Membership Criteria: The membership application shall contain a statement that the school will abide by the rules and regulations governing interscholastic athletics and in those cases where the school cannot comply, the application shall set forth the specific rule and regulation, and a sufficiently acceptable explanation of why the rule or regulation cannot be kept in force or why the school is incapable of compliance. Full compliance shall be made with all rules and regulations when an associate Member School competes with a full Member School of DIAA or a comparable state association; participates in DIAA sanctioned tournaments and meets in cross country, indoor track, wrestling (except dual team tournaments), outdoor track, and golf involving the aforementioned schools; or participates in a state championship event.

3.2.2 Such associate Member Schools, after initial approval, shall be reviewed each year by the Board for the purpose of approving, rejecting, or modifying their application for renewal of associate member status.

4.0 Annual Membership Dues

4.1 Pursuant to 14 **Del.C.** §304(1), yearly dues for full member and associate Member Schools shall be as follows:

- 4.1.1 ~~\$500~~ \$600 for middle schools. If a middle school and high school are located in the same administrative unit and the combined student enrollment of grades 6th through 12th is 499 or less then the school shall pay only the high school fee and be exempt from the middle school fee.
- 4.1.2 ~~\$500 for high schools with enrollments of 200 or less.~~
- 4.1.3 ~~4.1.2~~ \$750 \$850 for high schools with enrollments of 499 or less.
- 4.1.4 ~~4.1.3~~ \$1,000 \$1,100 for high schools with enrollments of 999 or less.
- 4.1.5 ~~4.1.4~~ \$1,250 \$1,350 for high schools with enrollments of 1,499 or less.
- 4.1.6 ~~4.1.5~~ \$1,500 \$1,600 for high schools with enrollments of 1,999 or less.
- 4.1.7 ~~4.1.6~~ \$1,750 \$1,850 for high schools with enrollments of 2,000 or more.
- 4.2 Enrollment figures shall be based on the September 30 enrollment count from the prior school year as verified by the Department.
- 4.3 Membership dues shall be paid each year by October 1st. Member Schools that have not paid dues by January 1st shall be assessed a 10% late fee. Full member and associate Member Schools which fail to comply may be subject to penalties as determined by the Board.

5.0 Compliance with Regulations

Member Schools shall comply with the regulations governing interscholastic athletics. Acceptance of membership shall be construed as an agreement to that effect.

6.0 Reporting Violations of Regulations

If a Member School violates a provision of the regulations governing interscholastic athletics the ~~Administrative Head~~ administrative head or designee shall notify the Executive Director in writing of the violation. The Executive Director may impose immediate penalties. All violations shall be reviewed by the Board which may impose additional penalties. The Executive Director or Board may impose additional penalties above the automatic penalties listed within the specific regulation violated as deemed necessary to assure proper conduct of interscholastic athletics or for repeat offenses.

7.0 Required Use of Approved Officials

- 7.1 Member Schools and tournament sponsors shall be required to use officials recognized and approved by DIAA for interscholastic contests. Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a ~~\$400.00~~ \$100 fine per game per non-approved official. In the case of emergencies, such as an act of God, refusal by an association to work games, or a shortage of qualified officials, Member Schools which desire to use other than approved officials must obtain permission from the Executive Director.
- 7.2 If more than 1 association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

8.0 School and Team Competition

- 8.1 Sponsoring Interscholastic Teams: Interscholastic competition is defined as any athletic contest between students representing 2 or more schools. Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition. Students are considered to be engaged in interscholastic competition representing a school if the school does any of the following:
 - 8.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).
 - 8.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.
 - 8.1.3 Permits students to compete under the name of the school.
 - 8.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications in excess of what is customarily done for "outside" organizations.
 - 8.1.5 Presents or displays individual or team awards.
- 8.2 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:
 - 8.2.1 The governing body of the participating district or nonpublic school approves participation in the sport. The ~~Administrative Head~~ administrative head shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.
 - 8.2.2 The governing body of the participating district or nonpublic school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries,

purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the ~~Administrative Head~~ administrative head.

8.2.3 The participating schools agree to comply with all applicable DIAA rules and regulations.

8.3 Levels of Participation - High School

8.3.1 Level 1 or developmental sport, less than 12 participating schools at the varsity level. DIAA rules and regulations shall not be in effect.

8.3.2 Level 2 or recognized sport, 12 or more participating schools at the varsity level.

8.3.2.1 Participating schools must petition the Board for official recognition of the sport. Notwithstanding the foregoing requirement, if 10 or more participating schools offer a Unified sport at the varsity level, the schools may petition the Board for official recognition of that Unified sport.

8.3.2.2 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship. All DIAA rules and regulations shall then be in effect.

8.3.3 Level 3 or championship ~~sport~~ sport, 16 or more participating schools at the varsity level. Upon petition by the sport committee and adoption of a tournament proposal, DIAA shall establish a state championship. Notwithstanding the foregoing requirement, DIAA may establish a state championship for Unified Sports that have a minimum of 12 participating schools at the varsity level.

8.3.4 Withdrawal of level 2 or level 3 status. If, for 2 consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board.

8.4 Levels of Participation - Middle School

8.4.1 Level 1 or developmental sport, less than ~~seven~~ 7 participating schools. DIAA rules and regulations shall not be in effect.

8.4.2 Level 2 or recognized sport, ~~seven~~ 7 or more participating schools.

8.4.2.1 Participating schools must petition the Board for official recognition of the sport.

8.4.2.2 At the time of official recognition, DIAA shall provide rules publications to the participating schools, designate an approved official's association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule. DIAA rules and regulations shall then be in effect.

8.4.3 Withdrawal of level 2 status: If, for 2 consecutive years, less than the required number of schools participate in a sport, DIAA may withdraw official recognition for a period of time as determined by the Board.

8.5 Membership on Coed Teams

8.5.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons. Sports are considered to be the same when 1 set of NFHS Rules govern both genders. If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team but if a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team. Notwithstanding the restrictions herein, a transgender student, defined as a student whose gender identity differs from the student's assigned sex at birth, ~~may be~~ is eligible to participate on a team other than their assigned sex at birth in accordance with ~~a Member School policy that meets the minimum standards designated by the Board~~ Title IX of the Education Amendments Act of 1972 20 U.S.C. §§1681-1688 (2018) as determined by the Member School.

8.5.2 Coed teams at the high school level shall participate only in the boys' state championship tournament or meet.

8.5.3 Subsections 8.5.1 and 8.5.2 do not apply to Unified Sports teams, which are coed by design.

9.0 Participation in State Championship Tournaments

9.1 Member Schools must meet all the criteria in subsections 9.1.1 through 9.1.7 to be eligible to participate in the DIAA state championship tournament.

9.1.1 The Member School shall be in compliance with all regulations governing interscholastic athletics.

- 9.1.2 The Member School shall be a DIAA Member School in good standing, including paying all fees.
- 9.1.3 The Member School shall sponsor a team in the given sport.
- 9.1.4 The Member School shall be in compliance with and meet all requirements of the tournament manual for that sport.
- 9.1.5 The Member School shall sponsor 1 varsity sport per season. Notwithstanding the foregoing criterion, co-ed members schools shall sponsor at least 1 varsity sport per gender per season.
- 9.1.6 The Member School shall sponsor a minimum of 2 grades, 1 of which must be the eleventh grade.
- 9.1.7 The Member School shall have been a DIAA Member School for a minimum of 2 full school years.

10.0 Requirements for Administrative Heads of DIAA Member Schools

- 10.1 The ~~Administrative Head~~ administrative head shall be responsible for the conduct of the school's interscholastic athletic program in which representative teams participate, including the organization and scheduling of individuals and teams. The ~~Administrative Head~~ administrative head may delegate the ~~Administrative Head's~~ administrative head's responsibility under subsection 10.1 to a subordinate but such delegation will not negate the ~~Administrative Head's~~ administrative head's responsibility for a violation of the regulations governing interscholastic athletics by the ~~Administrative Head of School's~~ administrative head of school's school.
- 10.2 The ~~Administrative Head~~ administrative head shall exercise general control over all of the interscholastic athletic matters of the ~~Administrative Head's~~ administrative head's school, including the requirements in subsections 10.2.1 through 10.2.12.
 - 10.2.1 The ~~Administrative Head~~ administrative head shall sanction all interscholastic athletic contests in which the ~~Administrative Head's~~ administrative head's school participates.
 - 10.2.2 The ~~Administrative Head~~ administrative head shall exclude from participation in interscholastic athletics any student athlete because of improper conduct or ineligibility.
 - 10.2.3 The ~~Administrative Head~~ administrative head shall exclude from participation in interscholastic athletics any student athlete whose physical health would be jeopardized by such participation because of illness or injury suffered until such time as the student athlete is declared physically fit by the school or attending physician.
 - 10.2.4 The ~~Administrative Head~~ administrative head shall protect the well-being of all visitors and officials attending interscholastic athletic contests conducted by the ~~Administrative Head's~~ administrative head's school. ~~Administrative Heads~~ heads shall provide for adequate security at the school and, in the absence of such provisions, penalties may be imposed by the Board. When a contest is conducted at a neutral site, the ~~Administrative Heads~~ administrative heads of the participating schools shall be held jointly responsible for the protection and well-being of all visitors and officials. In the absence of adequate security, penalties may be imposed upon either or both of the schools.
 - 10.2.5 The ~~Administrative Head~~ administrative head shall protect the well-being of the school's participants by providing them with safe and suitable uniforms and equipment and conducting ~~Practices~~ practices and contests in a manner which minimizes risk to the health and safety of student athletes.
 - 10.2.6 The ~~Administrative Head~~ administrative head shall ensure that all required contracts for athletic contests in which the school participates are in writing and bear the proper signatures.
 - 10.2.7 The ~~Administrative Head~~ administrative head shall designate a staff member of the school as the faculty manager for the teams representing the school or to serve as the faculty manager. If no such designation is made, the coach shall serve as the faculty manager.
 - 10.2.8 The ~~Administrative Head~~ administrative head shall ensure that an authorized representative accompanies the school's teams to all contests.
 - 10.2.9 The ~~Administrative Head~~ administrative head shall certify in writing the eligibility of the ~~Administrative Head's~~ administrative head's school's contestants in accordance with the regulations of the Department.
 - 10.2.10 The ~~Administrative Head~~ administrative head shall exercise such other powers regarding the interscholastic athletic program of the school as are consistent with the needs of the school and with the provisions and spirit of the regulations of the Department.
 - 10.2.11 The ~~Administrative Head~~ administrative head shall urge all students competing on the school's teams to obtain medical accident insurance which covers athletic participation.
 - 10.2.12 The ~~Administrative Head~~ administrative head shall notify DIAA of any official delegation of authority.