

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)

1029 Student Athlete Eligibility: Transfers

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** 1029 Student Athlete 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 incorporate 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.

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 June 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 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 facilitating students' school transfers for reasons related to bullying, educational needs, family moves, court action or military reassignment.

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 as it keeps in place protections against students transferring strictly for athletic advantage.

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 simplifying the transfer process. The new regulation aims to be consistent with the philosophies and decisions of the DIAA legislative task force.

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 high 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.

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.

27 DE Reg. 812 (05/01/24) (Prop.)