

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §§122(b)(15) & 303 and 29 **Del.C.** §10113(b)(2))

FINAL

ORDER

1020 DIAA Board Procedures

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors proposes the adoption of 14 **DE Admin. Code** 1020 DIAA Board Procedures. The proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors. The proposed regulation includes specifying the content of the regulation in Section 1.0 and incorporating defined terms from 14 **DE Admin. Code** 1006 into Section 2.0. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1006 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsection 3.1; proposed Section 4.0 is formerly Section 4.0; proposed Section 5.0 is based on Section 6.0 but it has been revised to reflect the current practice; proposed Section 6.0 is formerly subsection 7.2; proposed Section 7.0 is formerly subsection 7.2.2 and Section 8.0 and has been revised to reflect the current practice; and proposed Sections 9.0, 10.0, and 11.0 are formerly Sections 9.0, 10.0, and 11.0, respectively. Proposed Section 8.0 is new and is based on the hearing procedures used in hearings on waiver requests. It sets forth the hearing procedures for hearings that do not involve requests for waivers of the regulations.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

II. FINDINGS OF FACTS

On August 11, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1020 DIAA Board Procedures, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §10113(b)(2).

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. The Department further finds that the proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1020 DIAA Board Procedures.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1020 DIAA Board Procedures. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1020 DIAA Board Procedures, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1020 DIAA Board Procedures adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1020 DIAA Board Procedures 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 August, 2022.

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

Approved this 12th day of August, 2022.

1020 DIAA Board Procedures

1.0 Applicability

In accordance with 14 Del.C. §303, this regulation sets forth procedural rules for the DIAA Board of Directors.

2.0 Definitions

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

"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.

"Executive Director" means the Executive Director of the Delaware Interscholastic Athletic Association.

"Member School" means a full or associate member school of the DIAA.

3.0 Conflicts of Interest

3.1 Any member of the Board who may be directly affected or whose school or school district may be directly affected by a potential decision related to an appeal or waiver request shall recuse from consideration of the matter and shall not vote on that appeal or waiver request.

3.2 The Chairperson of the Board is responsible for maintaining the integrity of the decision-making process.

4.0 Responsibilities of the Executive Director

4.1 The Executive Director shall interpret the rules and regulations and may grant waivers of rules and regulations. Any waiver granted shall be temporary and shall be subject to review and approval by the Board. All decisions or actions as noted above shall be documented and shall be a part of any hearing or appeal procedure.

4.2 The Executive Director may decide issues between meetings of the Board. The Executive Director shall initiate a review of or fully investigate an alleged violation of the regulations that the Executive Director has seen, heard or read about, or which has been reported to him/her. The Executive Director may also refer investigations to committees referenced in 14 DE Admin. Code 1021 DIAA Committees or employ special investigators as necessary to conduct such investigations. Subsequent action by the Executive Director may include an official reprimand, placement on probation, a fine, the imposing of sanctions, or the suspension from participation for a designated period of time of a student athlete, team, coach, or official to ensure the necessary, orderly, and proper conduct of interscholastic competition.

4.3 The Executive Director shall carry on the business of the Board and DIAA between meetings. Waiver requests decided by the Executive Director shall be temporary and shall be subject to review and final approval by the Board. No school or individual shall be penalized in any case in which the Board reverses an earlier ruling of the Executive Director. In addition, the Executive Director shall administer the daily operation of DIAA.

4.4 In the event that the Executive Director is unavailable to perform the Executive Director's duties due to a conflict of interest or otherwise, and a matter requires immediate action, the Executive Director may delegate the matter to a subordinate in the DIAA Office, the Sportsmanship Committee or another applicable committee, or to the Board's Chairperson or Vice Chairperson. In such a case, the action shall be treated as the action of the Executive Director under the regulations.

4.5 In the event the Executive Director position is vacant, the Board may refer the Executive Director's responsibilities to a designee or designees, subject to the Department's approval and supervision, until the position is filled.

5.0 Adopting, Amending, and Repealing Regulations

5.1 Pursuant to 14 Del.C. § 303, the Board, working in consultation and cooperation with the Department, develops regulations relating to middle and secondary school interscholastic athletics.

5.2 The Board may initiate the process for adopting a new regulation or amending or repealing an existing regulation on its own or after receiving a written request.

5.2.1 Requests for the Board to adopt, amend, or repeal a regulation shall be submitted in writing to the DIAA Office. In order for a request to be considered complete, the request must include the applicable regulation or regulations; the specific request that is being made; who would be impacted by the request; the position of those who would be impacted by the request; and the requester's name, mailing address, phone number, and email address.

- 5.2.2 A complete request will be placed on a future agenda of the Board, as determined by the Board's Chairperson.
- 5.2.3 The requester may appear before the Board to present the request.
- 5.3 The Board may refer a regulation to the DIAA Rules and Regulations Committee to issue a recommendation to the Board.
- 5.4 The Board may request the Executive Director obtain information to aid in its decision whether to adopt, amend, or repeal a regulation.
- 5.5 The Board may consider any recommendations made by the DIAA Rules and Regulations Committee and any information obtained by the Executive Director in deciding whether to adopt, amend, or repeal a regulation.
- 5.6 The Board follows Delaware's Administrative Procedures Act when it decides to adopt, amend, or repeal a regulation (29 Del.C. §§10111 - 10119).
- 5.7 Once a regulation has been adopted, amended, or repealed, the Executive Director shall provide notice to Member Schools.

6.0 Protests

All protests involving game competition that are allowable as defined in the NFHS (name of sport) Rule Book, and deemed by the Executive Director to be the responsibility of DIAA, and not a local conference, shall be heard by a three-person protest panel. This panel will include the Executive Director, the Board's Chairperson or Vice Chairperson, and the State Tournament Director of the given sport. Protests must be submitted in writing within 48 hours of the conclusion of the contest or earlier if required by NFHS rules. The decisions of the DIAA protest panel may not be appealed to the Board.

7.0 Complaints Alleging Violations of Regulations

- 7.1 Any allegation that a Member School, student athlete, coach, administrator, official, or spectator violated a regulation relating to middle and secondary school interscholastic athletics shall be submitted to the DIAA Office in writing in the form of a complaint. A written complaint will not be processed unless it is complete. In order to be considered complete, the written complaint shall include the regulation that is alleged to have been violated; specific details of the alleged violation, including who violated the regulation and the date the violation occurred; and the complainant's contact information (i.e., name, address, phone number, and email address). DIAA will not address written complaints submitted by an anonymous person or source but the individual may contact the Executive Director specific to the assertion of the violation of the regulation.
- 7.2 After a written complaint is received, the DIAA Office will contact the complainant concerning the alleged violation and conduct a preliminary investigation, the purpose of which is to help the Executive Director determine whether to refer the complaint to the Board for a hearing.
- 7.3 If an allegation is made against a Member School, and a preliminary investigation has been conducted, the DIAA Office will forward the written complaint to the Member School, which will provide a written response to the complaint. For the purpose of this subsection, a written response includes a self-report under Section 6.0 of 14 DE Admin. Code 1024 DIAA Member Schools.
- 7.4 The Executive Director will review the complaint, the preliminary investigation results, and, if applicable, the Member School's written response to the complete and determine whether to close the complaint or refer the complaint to the Board or the Sportsmanship Committee.
- 7.5 If the complaint is referred to the Board, a hearing before the Board will be scheduled and the procedures in Section 8.0 of this regulation will be followed. If the complaint is referred to the Sportsmanship Committee, a hearing before the Sportsmanship Committee will be scheduled.
- 7.6 Based on the evidence presented at the hearing, the Board or the Sportsmanship Committee will determine whether a violation of a regulation has occurred and what penalties are appropriate to impose.

8.0 Hearing Procedures for Non-Waiver Matters

- 8.1 If a hearing before the Board is scheduled, the DIAA Office will provide written notice of the date, time, and location of the hearing to the applicable individuals.
- 8.2 The Board may permit opening and closing statements.
- 8.3 The Board may take testimony, hear proof, and receive exhibits into evidence at a hearing. Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 8.4 Testimony shall be under oath or affirmation. The Board may administer oaths to witnesses.
- 8.5 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Board.

- 8.6 Any document introduced into evidence at a hearing shall be marked by the Board and shall be made a part of the record of the matter. The Board will not accept or consider documents that are submitted after the hearing, as such documents are outside of the record.
- 8.7 Any request by the Board for additional information shall be promptly supplied.
- 8.8 The Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, the Board's decision shall be effective immediately.
- 8.8 The Board's decision will be incorporated into a written order, which is signed by the Board and sent to the individuals who were notified of the hearing.
- 8.9 An individual may be represented by an attorney at a hearing. The attorney representing the individual shall notify the Executive Director of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

9.0 Waiver of DIAA Rules and Regulations

9.1 General Hearing Procedures and Rules

- 9.1.1 The Board has the authority to set aside the effect of any athletic rule or regulation, subject to any limitations set forth in the specific rule or regulation, when the affected party establishes by the preponderance of the evidence, all of the following conditions:
 - 9.1.1.1 In the case of eligibility waiver requests, there exists a hardship as defined by subsection 9.2.1;
 - 9.1.1.2 Strict enforcement of the rule in the particular case will not serve to accomplish the purpose of the rule;
 - 9.1.1.3 The spirit of the rule being waived will not be offended or compromised;
 - 9.1.1.4 The principle of educational balance over athletics will not be offended or compromised; and
 - 9.1.1.5 The waiver will not result in a safety risk to teammates or competitors.
- 9.1.2 Waivers are exceptional and extraordinary relief from the athletic rules and regulations. Ignorance of any rule or regulation alone, whether by the student athlete, the student athlete's family or school, or other affected party shall not be sufficient reason for waiving a rule. The burden of proof rests on the applicant to show extenuating circumstances warranting waiver.
- 9.1.3 The waiver request shall contain all facts pertaining to the case, including sufficient information to make it possible for DIAA to reach a decision. If a waiver request does not include all of the required documentation, it will be deemed incomplete and will not be processed by DIAA.
 - 9.1.3.1 For a waiver request of an eligibility rule, the required documentation is set forth in subsection 9.2.2.2.
 - 9.1.3.2 For a waiver request of a non-eligibility rule, the required documentation is set forth in subsections 9.3.2 and 9.3.4.
- 9.1.4 All requests for a waiver, with all documentation complete, must be received by the Executive Director at least 30 calendar days before the next regularly scheduled meeting of the Board.
- 9.1.5 For requests for a waiver of an eligibility rule, the Executive Director will decide whether to grant a waiver, as provided in subsection 4.3, based on the waiver request and documentation submitted with the request.
 - 9.1.5.1 If the Executive Director decides to grant a waiver under subsections 4.3 and 9.1.5, the waiver is temporary and subject to the Board's approval. The Executive Director will send written notice of the decision to grant a waiver to the applicant, including when the Board will consider the matter. The applicant may attend the Board's meeting but is not required to do so.
 - 9.1.5.2 If the Board ratifies the Executive Director's decision to grant a waiver of an eligibility rule, the student athlete will remain eligible to participate as outlined in the Executive Director's written notice provided that the student athlete complies with all other eligibility rules.
 - 9.1.5.3 If the Board does not ratify the Executive Director's decision to grant a waiver of an eligibility rule, the student will no longer be eligible to participate as outlined in Executive Director's written notice and an evidentiary hearing before the Board will be scheduled.
- 9.1.6 If the Executive Director does not grant a waiver or the Board does not approve the Executive Director's decision to grant a waiver, a hearing before the Board will be scheduled.
 - 9.1.6.1 The Board may permit opening and closing statements.
 - 9.1.6.2 The Board may take testimony, hear proof, and receive exhibits into evidence at a hearing. Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

- 9.1.6.3 Testimony shall be under oath or affirmation. The Board may administer oaths to witnesses.
- 9.1.6.4 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Board.
- 9.1.6.5 The applicant's opportunity to submit documents to the Board for consideration is with the applicant's waiver request and at the applicant's hearing. Any document introduced into evidence at a hearing shall be marked by the Board and shall be made a part of the record of the matter. The Board will not accept or consider documents that are submitted after the hearing, as such documents are outside of the record.
- 9.1.6.6 Any request by the Board for additional information shall be promptly supplied by the applicant.
- 9.1.7 The Board shall consider the entire record of the case in reaching its final decision. Unless otherwise provided, the Board's decision on a waiver request shall be effective immediately.
- 9.1.8 The Board's decision will be incorporated into a written order, which is signed by the Board and sent to the applicant within 20 days of the hearing.
- 9.1.9 An applicant may be represented by an attorney. The attorney representing an applicant shall notify the Executive Director of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

9.2 Eligibility Rule Waiver Requests

- 9.2.1 Unless specifically defined in the eligibility rule in question, "hardship" means a hardship peculiar to the student athlete caused by unforeseen events beyond the election, control, or creation of the student athlete, his or her family, and his or her school, which deprive him or her of all or part of one of his or her opportunities to participate in a particular sports season. Ignorance of any rule alone, whether by the student athlete, his or her family, or his or her school, shall not be sufficient reason for waiving a rule. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.
- 9.2.2 All eligibility hardship waiver requests shall be processed on forms approved by the Board and in accordance with the following procedures:
 - 9.2.2.1 A request for a waiver of the eligibility rules must be directed by the student athlete to the involved Member School's Principal, Headmaster, or the Principal or Headmaster's designee who shall then file a written request stating the full particulars of the case and the reasons felt by the student athlete or the school, or both, for granting the waiver.
 - 9.2.2.1.1 All requests for eligibility rule waivers must be signed by the Principal or Headmaster of the school requesting the waiver and must include a letter from the Principal or Headmaster indicating whether the school supports the waiver request.
 - 9.2.2.1.2 The school shall submit a waiver request form when requested by individual student athletes. The Board, however, may take into consideration the school's position on the waiver request when rendering its decision.
 - 9.2.2.2 To aid the Board in making an informed decision, the waiver request shall include the student athlete's:
 - 9.2.2.2.1 Official transcripts from the sixth grade through the current school year and most recent report card or grade report (if the most recent grades are not included on the transcript);
 - 9.2.2.2.2 Attendance records for the last two years;
 - 9.2.2.2.3 A letter from the Principal or Headmaster of the school requesting the waiver either supporting or not supporting the waiver request;
 - 9.2.2.2.4 A letter from the student athlete, the student athlete's parent, guardian, or Relative Caregiver, or both explaining in detail the circumstances for requesting a waiver;
 - 9.2.2.2.5 Documentation of withdrawal from a school (if applicable);
 - 9.2.2.2.6 Documentation of acceptance in a school, such as an acceptance letter from a nonpublic school (if applicable);
 - 9.2.2.2.7 School District Choice Enrollment Program documents that show the date of withdrawal and the date of enrollment (if applicable);
 - 9.2.2.2.8 School calendar;
 - 9.2.2.2.9 Any documentation specifically required by the rule;
 - 9.2.2.2.10 Medical records (if applicable);
 - 9.2.2.2.11 Legal documentation (if applicable);

9.2.2.2.12 IEPs (if applicable);

9.2.2.2.13 Any documentation or evidence to substantiate a hardship exists;

9.2.2.2.14 For waiver requests of the Junior High and Middle School Transfer Rule and High School Transfer Rule, documentation of official withdrawal from the sending school and official registration in or acceptance to the receiving school. In addition, the student athlete is required to obtain a certification from the sending and receiving schools that the student athlete transferred for the reasons indicated on the student athlete's waiver request form and that the student athlete's transfer was not motivated by an athletic purpose. If the student athlete is unable to obtain a certification from the sending school, the receiving school, or both schools, the student athlete may submit a written statement explaining why the student athlete is unable to obtain the certification.

9.2.3 An appearance by the student athlete and the student athlete's parent, guardian or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.

9.3 Waiver Requests of Non eligibility Rules

9.3.1 The Principal or Headmaster of a Member School, or any other individual may request a waiver of a rule or regulation not directly related to student eligibility when special circumstances arise that, in the Principal or Headmaster's opinion, or in the opinion of the individual, call for relief from, or modification of the effects of the rule or regulation.

9.3.2 All requests for non eligibility waivers must be in writing, signed by the Principal or Headmaster, or other individual.

9.3.3 An appearance by the applicant requesting the non eligibility waiver is optional. If the Principal or Headmaster or the Principal or Headmaster's designee or other individual requesting the non eligibility waiver chooses to appear before the Board the individual must notify the Executive Director of the individual's intent to do so at the time the request for waiver is filed. Otherwise, the individual may attend the meeting but may not be permitted to address the Board.

9.3.4 If the waiver requested would affect more than one Member School, the applicant shall provide the position of the other affected Member Schools on the waiver request in their written application. The failure to provide this information may result in a delay in the Board's consideration of the waiver request.

9.4 Exceptions to Playing Rules for Student Athletes

9.4.1 Notwithstanding subsection 9.1.1, a student athlete who requests an exception to a playing rule that has been adopted by the Board shall establish the following four conditions by a preponderance of the evidence:

9.4.1.1 The student athlete has special needs or unique or extenuating circumstances;

9.4.1.2 The requested exception will not fundamentally alter the sport;

9.4.1.3 The requested exception will not heighten risk to the student athlete or others; and

9.4.1.4 The requested exception will not place opponents at a disadvantage.

9.4.2 The request shall be on the form approved by the Board and it shall include:

9.4.2.1 The playing rule or rules at issue;

9.4.2.2 The exception that the student athlete requests; and

9.4.2.3 Documentation to support the four conditions in subsection 9.4.1.

9.4.3 An appearance by the student athlete and the student athlete's parent, guardian, or Relative Caregiver before the Board is mandatory. An appearance by a school representative is strongly encouraged.

10.0 Appeal Procedure to the Board

10.1 Decisions of the Executive Director or Sportsmanship Committee, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed de novo to the Board.

10.1.1 Initiation of an Appeal to the Board

10.1.1.1 Whenever a right of appeal of a decision to the Board is provided, an aggrieved person who is under the regulatory authority of DIAA and who has, in fact, suffered a direct injury due to the decision, may initiate an appeal by filing a Notice of Appeal with the Executive Director. The notice shall be in writing, shall be signed by the person making the request (or by the party's authorized representative), and shall be delivered to the Executive Director by certified mail.

10.1.1.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

10.1.1.3 The notice of appeal shall be filed within a reasonable time after the controversy arises, but in no event shall a notice be filed more than thirty calendar days after the appellant's receipt of written notice that official action has been taken by the Executive Director or other authorized person or body.

10.1.1.3.1 Notwithstanding the above, the notice of appeal shall be served ten calendar days after appellant's receipt of written notice that official action has been taken by the Executive Director or the Sportsmanship Committee pursuant to 14 **DE Admin. Code** 1023 Sportsmanship.

10.1.1.4 A copy of the notice of appeal shall be delivered to all other parties to the proceeding at the same time it is sent to the Executive Director. A copy of any other paper or document filed with DIAA shall also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

10.1.1.5 Upon receipt of an adequately detailed notice of appeal, the Executive Director shall place the appeal on the next meeting agenda of DIAA.

10.1.1.6 An appeal shall not stay the decision of the Executive Director, the Sportsmanship Committee, or any other subordinate.

10.1.2 Record of Prior Proceedings

10.1.2.1 If proceedings were previously held on the matters complained of in the notice, the committee which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Director.

10.1.2.2 The record shall contain any written decision, a copy of the rule or regulation involved, any minutes of the meetings at which a disputed action was taken, a verbatim transcript of the hearing conducted by the party below, and all exhibits presented at the agency.

10.1.2.3 The record shall be filed with the Executive Director within ten calendar days of the date the Executive Director notifies the committee that the notice was filed, unless directed otherwise. A copy of the record shall be sent to the appellant when it is submitted to the Executive Director.

10.1.3 Board Hearing Procedures for Appeals

10.1.3.1 Record Review

10.1.3.1.1 If a hearing was previously held on the matters complained of in the notice, the parties to the proceeding before the Board may agree to submit the matter to the Board on the existing record without the presentation of additional evidence. The parties shall inform the Executive Director in writing of their agreement to submit the matter to the Board on the existing record no later than ten calendar days after the notice was filed.

10.1.3.1.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The written statements shall be filed no later than ten calendar days before the consideration date, unless otherwise directed.

10.1.3.1.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen minutes per side with an additional 5 minutes for rebuttal.

10.1.3.1.4 If the parties agree to submit the matter for decision on the existing record, the Board's decision shall be based on the existing record, the written statements and oral argument, if any.

10.1.3.2 Evidentiary Hearings

10.1.3.2.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the Board otherwise decides to receive additional evidence.

10.1.3.2.2 The Chairperson or designee shall be the hearing officer. The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

10.1.3.2.3 The Board may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

10.1.3.2.4 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

- 10.1.3.2.5 The hearing will proceed with the appellant first presenting its evidence and case. The responding party may then present its case. The appellant will have an opportunity to present rebuttal evidence.
- 10.1.3.2.6 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the Board.
- 10.1.3.2.7 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Board.
- 10.1.3.2.8 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
- 10.1.3.2.9 Any party to a proceeding before the Board may be represented by counsel. An attorney representing a party in a proceeding before the Board shall notify the Executive Director of the representation in writing as soon as practicable.
- 10.1.3.2.10 Strict rules of evidence do not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
- 10.1.3.2.11 Any document introduced into evidence at the hearing shall be marked by the Board and shall be a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties, if any, and to each of the Board members present for the hearing unless otherwise directed.
- 10.1.3.2.12 DIAA shall provide a stenographic reporter at a hearing at its own expense.
- 10.1.3.2.13 The Board's decision shall be incorporated into a final order, which shall be signed and mailed to the parties within twenty calendar days of the hearing.

11.0 Appeals to State Board of Education

An appeal shall not stay the decision of the Board.

26 DE Reg. 186 (09/01/22) (Final)