



DISABILITIES LAW PROGRAM

COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801

Wilmington, Delaware 19801

(302) 575-0690 (TTY) (302) 575-0696 Fax (302) 575-0840

www.declasi.org

To: GACEC Policy and Law

CC: SCPD Policy and Law; DDC

From: Disabilities Law Program

Date: 09/06/2018

Consistent with council requests, I am providing an analysis of relevant proposed regulations appearing in the September 2018 issue of the Delaware Register of Regulations. As the legislature is not in session, there are no new bills to review.

Proposed Regulations

1. Proposed DDOE Regulation 1008 regarding DIAA Junior High and Middle School Athletics, 22 Del. Register of Regulations 186 [September 1, 2018]

These proposed regulations focus on providing a rational approach to school transfers, in an attempt to diminish transfers that are motivated by obtaining athletic advantage. Generally, any student who transfers for athletic advantage must wait 90 days from enrollment to participate in any sports. There is an existing waiver process in Section 1006, 9.0 that allows the DIAA Board to waive any rule. The proposed regulation lists a number of exceptions to the waiver process, to cover almost any situation where the circumstances of the transfer clearly do not relate to athletics, such as homelessness, DSCYF custody, changes in custody, legitimate moves to new districts, court order and transfers due to Unsafe School Choice.

The language in 2.4.3.1 is very awkward, particularly the cross-reference to Section 1006 and the hardship process. The language should be amended to more directly state that a student who meets one of the exceptions listed in this regulation does not have to file a waiver request under Section 1006, 9.0. It is unclear why the language “including hardship” is added in the third

line and it may confuse individuals seeking a financial hardship waiver under 2.4.4 of Section 1008, who are required to file for a waiver.

None of the exceptions apply if the student's primary motivation is to gain athletic advantage. A student whose primary motivation is advantage can still ask for a waiver of the transfer rule. However, there is no articulated process governing how a district would be able to ascertain an athlete's motivation, or how an athlete would prove that the transfer was not motivated by the desire to gain advantage if someone alleged that is was. It is easy to envision how this could descend into a rumor-driven mess, and the lack of due process could render this section unenforceable.

Section 2.4.6.2 penalizes any athlete attending a school out of their feeder pattern through School Choice who then transfers to another school outside of their feeder pattern during the school year by rendering them ineligible for the entire first school year. However, such students falling under the exceptions under 2.4.3 are not subject to this rule.

The proposed regulation also rewrites the section covering Years of Participation. The rule prohibits organized scholastic sports below 6th grade. The rule places restrictions on participation in football for 6th graders and places a six semester limit after the commencement of 6th grade and restricts the number of sports in which a student can participate.

Section 2.7.3 discusses the waiver process for the Years of Participation rule based on hardship. This rule does not discuss disability-related reasons for a hardship waiver, listing illness, injury or accidents but not disability. Section 2.7.3.1.2 indicates that "there must be a clear and direct causal relationship between the hardship condition and the failure of the student to complete academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of the student's opportunities to participate in a particular sport." Section 2.7.3.1.3 places the burden on the student to prove the connection and severity, and indicates that the family must prove that it sought assistance to ameliorate the effects of the hardship condition. Councils may want to consider clarifying language that disability-related hardships are covered by this section and that amelioration requirements do not apply to disability-related hardships.

Finally, the proposed regulation amends the Concussion Protocol. In Section 3.2.1, The rule requires that any athlete suspected of sustaining a concussion be immediately removed from play and evaluated by a Qualified Health Care Professional (defined in 1.1 as a licensed doctor, school nurse, nurse practitioner, Physician Assistant or athletic trainer). If a concussion is confirmed or not ruled out, the athlete is referred to a physician and cannot play until cleared in writing on the DIAA Acute Concussion Evaluation and Return to Play form. Failure to comply renders the athlete ineligible and exposes the school to penalties.

Section 3.4.1 requires the presence of a Qualified HealthCare Professional at all interscholastic football games. Failure to comply results in a \$250 fine.

Councils may wish to endorse this proposed change as it will assist in limiting life-altering head injuries by student athletes and promotes safe practices.

2. Proposed DDOE Regulation 1009 regarding DIAA High and School Athletics, 22 Del. Register of Regulations 187 [September 1, 2018]

This proposed regulation mirrors the proposed changes in Section 1008 discussed above relating to concussion protocol (Section 3.2.1-3.2.7; 3.4.1). Additionally, Sections 7.1.2.2 and 7.1.2 require all certified and emergency coaches to complete the NFHS Concussion in Sports course online¹, every two years. Section 7.4.1 requires all football coaches to complete Heads Up Football Training. Schools that fail to comply are subject to forfeiture, fines and suspension under Section 2.10 for not following concussion protocol and subject to a \$50 fine and possible suspension for not completing training requirements.

Councils should consider endorsing these important changes to training requirements related to head injury for athletic coaches as the DIAA takes these important steps to avoid and mitigate the effects of sports-related head injuries and traumatic brain injury

¹ <https://nfhslearn.com/courses/61151/concussion-in-sports>;

3. DMMA Proposed Rule on Alternatives to Medicare certification for HHAs, 22 Del. Register of Regulations 194 [September 1, 2018].

This regulation was initially published in the June Register of Regulations and evaluated briefly in the June Policy and Law Memorandum and is being republished with minor changes. The regulation seeks to add alternatives to Medicare certification for home health agencies accepting Medicaid. The only difference between the original and the current form is the addition of language in the first sentence that a home health agency must be certified by Medicare or “accredited by” an accreditation organization. Presumably these entities do not certify, they accredit. The second change adds a phrase clarifying that accreditation organizations certify compliance with the standards they set themselves. Neither of these changes is substantive and Councils should consider taking no further action at this time.

Final Regulations

1. Final DSHS Delaware Council on Police Training, Regulation 801, 22 Del. Register of Regulations 230 [September 1, 2018]

The July Policy and Law memo addressed this proposed regulation. At council suggestion, DSHS agreed to modify language by using the word “interactions” instead of “handle.” They declined to incorporate any changes related to providing reasonable accommodations in testing, because that was not within the scope of the proposed changes. Councils should consider thanking DSHS for adopting the suggested change, and SCPD and in particular the ADA Coordinator may wish to reach out to DSHS to address the lack of a reasonable accommodations policy for police training.

2. Final DDOE Regulation on Educator Preparation Programs 290, 22 Del. Register of Regulations 219 [September 1, 2018].

Councils commented on this proposed regulation in July. DDOE made several relatively minor corrections/additions based on Council comments. Councils had a generally favorable view of this regulation, and probably do not need to take any further action as such.

DIAA ACUTE CONCUSSION EVALUATION (ACE) & RETURN TO PLAY FORM



Athlete Name: _____

Date of Birth: _____

Sport: _____

Date of Injury: _____

Qualified HealthCare Provider (QHP) at school

Name of QHP initially examining athlete on site: _____ (please print)

Date initially examined: _____

Today the following symptoms are present (please circle):

No reported symptoms: _____

Physical	Thinking	Emotional	Sleep
Headache	Light sensitivity	Feeling mentally foggy	Irritability
Nausea	Noise sensitivity	Problems concentrating	Sadness
Fatigue	Numbness/tingling	Problems remembering	Feeling more emotional
Vomiting	Visual problems	Feeling slowed down	Nervousness
Dizziness	Balance problems		
OTHER: _____			

Gradual Return to Play (RTP) Plan

RTP Plan must occur in gradual steps under the supervision of a QHP (see DIAA regulations for definition of QHP). This QHP, usually the schools ATC or RN, should be on-site supervising the RTP plan. After completion of a stage without any symptoms, athlete may progress to the next level of activity on the next day. If symptoms return, athlete must regress the stage and be seen by a qualified physician (see DIAA regs) if not seen by a MD/DO prior. Continued or worsening signs or symptoms should be reported to the physician immediately. **Before an athlete may initiate Stage 5 'full contact', they must be cleared by a qualified physician.**

School QHP Signature: _____

Date: _____

- Stage 1: No physical or cognitive activity. This includes no video games, computers, or school work. If athlete has no signs or symptoms consistent with a concussion they may progress, after 24 hours, to Stage 2, etc.
- Stage 2: Low levels of activity (ie symptoms do not come back during or after the activity). This includes walking, light jogging, light stationary bike, light weight lifting (low weight, higher reps, no bench, no squat)
- Stage 3: Moderate levels of activity with body/head movement. Includes moderate jogging, brief running, moderate-intensity stationary biking, moderate-intensity weightlifting (reduce time and/or weight from typical routine)
- Stage 4: Heavy non-contact activity. This includes sprinting/running, high intensity stationary bike, regular weightlifting routine, non-contact sport specific drills (3 planes of movement)
- Stage 5: *** Must have physician clearance before beginning this stage*** Full contact in controlled practice.**
- Stage 6: Full contact in game play. If signs or symptoms return after Stage 5, must see physician again for Stage 6 clearance.

- ❖ ATHLETES MAY NOT RETURN TO ANY PHYSICAL OR COGNITIVE ACTIVITY ON THE SAME DAY THAT A HEAD INJURY OCCURRED
- ❖ ATHLETES MAY NOT RETURN TO PHYSICAL OR FULL COGNITIVE ACTIVITY IF THEY EXHIBIT ANY SIGNS OR SYMPTOMS CONSISTENT WITH A CONCUSSION
- ❖ ATHLETES MUST SUCCESSFULLY PROGRESS THROUGH THE RTP PLAN, WITH MD/DO CLEARANCE, BEFORE CONTACT/RTP

PHYSICIAN SPORTS CLEARANCE

I declare that I am a qualified physician (MD or DO only) who, in accordance with DIAA regulations as well as standards of medical care in concussion management, recommend the following:

- May
check
more
than
one
box

- May not progress within the RTP Plan above; requires restricted school day at this time (see reverse).
Contact my office _____
 - May resume gradual progression of the RTP Plan with the following exceptions/modifications: _____
 - May progress, per protocol, through Stage 5, and if symptom free, may advance to Stage 6.**
 - Other: _____

This RTP Plan was based upon today's evaluation:

Physician's Name: _____ (please print) Physician's Office Phone: _____

Physician's Signature: _____ Date: _____

This form is adopted from the Acute Concussion Evaluation care plan developed by the CDC (www.cdc.gov/injury). All medical providers are strongly encouraged to use this form for concussed athletes participating in DIAA sports. While other forms may be used, **all medical providers must abide by DIAA protocol** (http://www.doe.k12.de.us/infosuites/students_family/diaa/) including the return to play plan noted above, before an athlete may return to athletics.

PHYSICIAN SCHOOL CLEARANCE

Rest, limiting physical and cognitive activity, and proper nutrition including good hydration, carbohydrates and protein are essential during concussion recovery. Thinking and emotional dysfunctions may require your child to receive extra help in school; therefore, inform your school's nurse and athletic trainer if your child has obtained a concussion. Please note that a full, non-symptomatic school day of cognitive activity must be achieved before progressive return to sport (**stage 2**) can be initiated. Restrictions for return to school as recommended by your physician are as follows:

Until you (or your child) have fully recovered, the following supports are recommended: *(check all that apply)*

- No return to school. Return on (date) _____
- Return to school with following supports. Review on (date) _____
- Shortened day. Recommend ___ hours per day until (date) _____
- Shortened classes (i.e., rest breaks during classes). Maximum class length: ___ minutes.
- Allow extra time to complete coursework/assignments and tests.
- Lessen homework load by ____%. Maximum length of nightly homework: ___ minutes.
- No significant classroom or standardized testing at this time.
- Check for the return of symptoms (use symptom table on front page of this form) when doing activities that require a lot of attention or concentration.
- Take rest breaks during the day as needed.
- Request meeting of 504 or School Management Team to discuss this plan and needed supports.

INSTRUCTIONS FOR ACE SPORTS RETURN FORM

1. If an athlete exhibits signs or symptoms consistent with a concussion, they shall be removed from play immediately. A qualified health care professional (QHP) must then determine whether or not an apparent concussion has occurred. If a qualified healthcare professional is not present, the injury must be treated as a concussion and the student not be allowed to return to practice/game until determined otherwise by a qualified healthcare professional. If the qualified healthcare professional is unable to rule out a concussion, the athlete must be treated as though he/she has sustained a concussion. The top (blue) section of the ACE form should be completed by the QHP, and the gradual RTP plan should be initiated. Note: in all situations where an athlete is determined to have a possible concussion, the athlete's parent or guardian should be contacted as soon as possible, and explained progressive warning signs as well as the RTP plan. If the symptoms become progressive, they should seek out physician services immediately.

2. The school's QHP may progress the athlete through the RTP plan (gold section) through stage four, so long as no symptoms return. Light physical activity (stage 2) should only be initiated after tolerance to a full school day, without symptoms. Each stage of the RTP plan should be no less than one day long. If symptoms return, the athlete must be referred to a qualified physician (MD or DO only) before any further activity can occur. Before progressing to stage 5, the QHP must sign off on the RTP plan section of the form, and refer the athlete to a qualified physician (MD/DO only) if the athlete has not already seen a physician or if the physician requires such follow-up after an earlier physician visit.

3. **Before progressing to stage 5 or beginning PE class, the school must obtain written clearance from a qualified physician (MD/DO only).** This clearance can be found at the bottom (grey section) of the ACE form. Any athlete that progresses into stage 5 and beyond without written clearance shall be considered ineligible, and all games subsequent to such entry shall be a forfeit for the school.

A qualified healthcare professional (QHP) shall be defined as a MD or DO; or school nurse, nurse practitioner, physician assistant, or athletic trainer, with collaboration and/or supervision by a MD or DO as required by their professional state laws and regulations. The qualified healthcare professional must be licensed by their state, be in good standing with the State of Delaware, and if the evaluation is provided on site must also be approved or appointed by the administrative head of school or designee, or the DIAA Executive Director "Written Clearance from a **qualified physician**" for progression into stage 5 and return to play after a potential concussion, shall be a MD/DO only, who is licensed by their state and in good standing with the State of Delaware.

FOR MORE INFORMATION GO DIAA AND CDC WEBSITES NOTED BELOW: WWW.CDC.GOV/INJURY

This form is adopted from the Acute Concussion Evaluation care plan developed by the CDC (www.cdc.gov/injury). All medical providers are strongly encouraged to use this form for concussed athletes participating in DIAA sports. While other forms may be used, **all medical providers must abide by DIAA protocol** (http://www.doe.k12.de.us/infosuites/students_family/diaa/) **including the return to play plan** noted above, before an athlete may return to athletics.