



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

May 28, 2021

Department of Education
Office of the Secretary
Attn: Regulation Review
401 Federal Street, Suite 2
Dover, Delaware 19901

RE: Proposed DOE Regulation on 1011 Interscholastic Athletics During the COVID-10 Pandemic, 24 Del. Register of Regulations 971 (May 1, 2021)

The State Council for Persons with Disabilities (SCPD) has reviewed the proposed regulation by the Department of Education (DOE) to incorporate new edits to regulations governing school interscholastic activities during the COVID-19 pandemic. The proposed regulation was published as 24 DE Reg. 971 in the May 1, 2021 issue of the Register of Regulations. SCPD has the following observations.

These proposals include: adding informal instruction to defined terms in Section 2.0 and in the Return to Play Stages in Section 3.0; repealing the pre-participation physical examination requirements that applied to the 2020-2021 school year; revising the four Return to Play Stages to eliminate sports categorized as low, medium, and high risk for COVID-19 spread based on guidance from the American Medical Society for Sports Medicine and the National Federation of State High School Associations; repealing Section 5.0, which provided the dates for the fall, winter, and spring sport seasons during the 2020-2021 school year and set forth sport-specific requirements; revising the face covering requirements in

subsection 3.5.3.3; and adding the previous requirements that the Board may mandate sport-specific requirements that are designed to protect the physical well-being of student athletes and that Member Schools follow any sport-specific plans approved by the Board to Section 3.0.

DOE makes some minor additions and edits to its definitions in this regulation, including adding the term: “Informal Instruction” [to] mean[] drills to teach sport-specific skills with only demonstration-level contact permitted. Informal instruction does not involve team competitions or contests. Intentional or direct contact is not permitted as provided in 14 DE Admin. Code 1009. DOE also proposes to make minor edits and additions to its “Return to Play” stages of reopening sports activities for students. Throughout each stage of “Return to Play,” DOE removes references to temperature screenings (3.5.3.2), and proposes some edits to its face covering requirements, removing the requirement that “student athletes shall wear face coverings based on the Delaware Division of Public Health’s current guidance applicable to sports,” (3.5.3.3) and adding language the following language:

If face coverings are required, breaks of at least two minutes during which student athletes remove their face coverings while maintaining a distance of six feet from others shall be taken every 20 minutes during Practices, Scrimmages, and Competitions in continuous running sports, including field hockey, lacrosse, and soccer. If face coverings are no longer required for a particular sport, a student athlete who participates in the sport may choose to wear a face covering. (3.5.3.3).

DOE also proposes minor edits to decrease restrictions on hydration stations (3.5.3.8) and the use of whistles (3.5.3.11), and removes earlier COVID restriction on scrimmages and competitions against schools in other states (4.5.3.15-16). DOE also proposes to remove language about “covering equipment that has holes with exposed foam, such as athletic pads” and requiring athletes to come to sports activities in their equipment and uniforms/workout clothing and to wash workout clothing immediately upon getting home. (4.5.4.6.5-5; 4.5.5.8.4-5; 4.5.6.8.4-5) DOE also proposes to eliminate language requiring contact tracing plans in Stage 4 of the Return to Play plan.

Throughout, DOE also proposes edits to requirements regarding COVID-19 screening and approvals to engage in interscholastic competitions and other athletic activities, changing the language from more specific requirements to more general requirements that schools follow the Division of Public Health’s latest guidance. DOE also proposes to remove language specific to Fall, Winter and Spring Sports of the 2020- 2021 school year (5.0) and sports-specific restrictions

and requirements, although they do propose language that sports-specific requirements and restrictions may be mandated as needed. (3.5.6.6.5).

Throughout these proposed regulations, DOE makes relatively few changes to restrictions and requirements regarding athletic activities and “vulnerable individuals.” DOE proposes to edit the definition of “vulnerable individual” removing the language that a “vulnerable individual” is someone “strongly advised to shelter in place,” leaving instead the language that someone “qualifies as vulnerable based on the Delaware Division of Public Health’s guidance.” (2.0). In DIAA Return to Play Stage 1, DOE retains the language that “vulnerable individuals shall not attend workouts,” the only type of sports activity permitted play during this stage (3.5.4.1). In Stage 2, DOE makes minor but not substantive edits to the restrictions on vulnerable individuals and their ability to participate in this stage, proposing that in Stage 2, “vulnerable individuals shall not attend workouts, practices, conditioning programs, informal instruction, or open gym programs.” (3.5.5.1). (“Scrimmages” and “competitions” were removed from the list as they are prohibited for everyone in this stage, while “informal instruction” was added to the activities discussed in this stage and the list of prohibited activities for vulnerable individuals). (3.5.5.1). In Stages 3 and 4, DOE proposes no edits besides adding “informal instruction” to the activities vulnerable individuals may participate in. (3.5.6.1; 3.5.7.1).

In SCPDs previous comment from October 2020 on DOE regulations regarding student athletic activities during the COVID-19 pandemic, Council noted that while the more restrictive limitations proposed by DOE for “vulnerable individuals” are likely proposed to ensure safety and health for all, they may raise concerns about compliance with the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”), which require equal access to all students with disabilities to the programs, activities, and facilities of a school and school district. In our previous comment, SCPD recommended that:

Instead of completely restricting the participation for a “vulnerable individual” in interscholastic activities, there should be an individualized assessment to determine whether it is appropriate for a student to participate. Failure to do so could lead to a violation of the ADA or Section 504 and will surely begin and continue to further segregate students with disabilities from their peers.

SCPD recommends that DOE and the DIAA either (1) completely remove the restriction for a “vulnerable individual” or (2) change the language to remove the

complete restriction (the words “shall not”) and instead include a more individualized assessment for each student.

Because DOE did not propose substantial changes related to additional restriction for “vulnerable individuals,” SCPD recommends a more individualized assessment of a student’s ability to participate safely under each stage of the DIAA’s Return to Play plan.

Thank you for your consideration and please contact the SCPD if you have any questions or comments regarding our observations and recommendation on the proposed regulation.

Sincerely,



Terri Hancharick, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Susan Bunting, Department of Education
Mary Ann Mieczkowski, Department of Education
Linnea Bradshaw - Executive Director of the PSB
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