



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621


The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: November 28, 2023

TO: Department of Education, Office of the Secretary, Attn: Regulation Review

FROM: Benjamin Shrader, Chairperson 
State Council for Persons with Disabilities

RE: Proposed Delaware Department of Education (DDOE) regulation to amend 14 Del. Admin Code 1001 regarding Participation in Extra Curricular Activities, 27 Del. Register of Regulations 308 (November 1, 2023).

The State Council for Persons with Disabilities (SCPD) has reviewed the Delaware Department of Education's (DDOE) proposal to amend 14 Del. Admin. C. § 1001 regarding Participation in Extra Curricular Activities. The proposed regulation was published as 27 DE Reg. 308 in the November 1, 2023, Register of Regulations.

In this legislation, the DDOE states it is proposing to repeal the entirety of 14 De. Admin. Code 1001 as the regulation "is no longer necessary" as "academic eligibility criteria for middle and high school students' participation in extracurricular activities is established by the Delaware Interscholastic Athletic Association (DIAA) Board".

The SCPD has the following comments:

- Previously the regulation that is to be struck read:
Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 DE Admin. Code 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 DE Admin. Code 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics. Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal

guidelines. See 34 CFR Sec. 104.4.

- Under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Delaware’s DIAA must offer an equal opportunity to students with disabilities to participate in sports, which may include the requirement to provide reasonable accommodations such as changes to policies. *In re: Dear Colleague Letter of Jan. 25, 2013* (OCR), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>. Likewise, students with IEPs must be afforded an equal opportunity to participate in extracurriculars, including with supplementary aids and services deemed appropriate and necessary by their IEP team. 34 CFR § 300.107.
- This last provision of the current regulation concerning students with disabilities, does not appear in the DIAA statutory language, or in other DIAA regulations.

The SCPD recommends the DDOE maintain a modified statement of non-discrimination such as: “In establishing and implementing academic eligibility criteria applicable to students with disabilities, some flexibility may be necessary to ensure that students with disabilities have an equal opportunity to participate in extracurricular activities, as contemplated by Federal guidelines. See e.g., 34 CFR Sec. 104.4 and 34 CFR § 300.107”, or DDOE could otherwise incorporate such a statement elsewhere in the DIAA regulations.

Thank you for your consideration and please contact the SCPD with any questions or comments regarding our observations and recommendations on this proposed regulation.

cc: Ms. Marissa Band, Esquire CLASI, DLP
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council