



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

September 25, 2018

Ms. Emily Cunningham
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 22 DE Register of Regulation 1008 [DOE Proposed Regulation 186 DIAA Junior High and Middle School Athletics (September 1, 2018)]

Dear Ms. Cunningham:

The State Council for Persons with Disabilities (SCPD) has reviewed Delaware Department of Education's (DDOE) proposed regulation focuses on providing a rational approach to school transfers, in an attempt to diminish transfers that are motivated by obtaining athletic advantage. The proposed regulation was published as 22 DE Reg. 186 in the September 1, 2018 issue of the Register of Regulations.

The SCPD has the following observations.

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. The SCPD supports having or not having a waiver, and removing the motivation analysis. The SCPD is asking for clarifying language that disability-related hardships are covered by this section and that melioration requirements to 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.

The SCPD endorses the amendments to the Concussion Protocol, but supports expanding this to all contact sports, not just football.

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

Sincerely,



Nicholas J. Fina, Ed.D.
Chairperson - State Council for Persons with Disabilities

cc: The Honorable Susan S. Bunting, Ed.D. Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Ms. Whitney Sweeney, State Board of Education
Ms. Maryann Mieczkowski, Department of Education
Ms. Laura Makransky, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Valerie Dunkle, Esq., Department of Justice
Ms. Laura Waterland, Esq.
Developmental Disabilities Council
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