

DIAA Board of Directors' Meeting Minutes
Thursday, February 10, 2011 – 9:00 a.m.
John W. Collette Education Resource Center

I. Opening

A. Call to Order

The meeting was called to order at 9:11 a.m. by Gerald Kobasa, DIAA Chairperson.

B. Roll Call

The following DIAA Board members were present: Gerald Kobasa, Michael Wagner, Curtis Bedford, Edna Cale, Craig Eliassen, Laura Leone, Catherine Marvel, Susan Coffing, Terre Taylor, Pam Love, Woody Long, Dr. Jeffrey Hawtof, Dr. Mark Holodick, Dr. Amelia Hodges, and Ron Eby. Kevin Charles, Executive Director, and Paula Fontello, Deputy Attorney General, were also in attendance. Harvey Hyland, Dr. Dianne Sole, Eugene Montano and Randall O'Neal were unable to attend the meeting.

C. Approval of Agenda

Ms. Marvel made a motion to approve the agenda with the addendum. The motion was seconded by Ms. Cale and carried unanimously.

D. Approval of Minutes of January 20, 2011 Board of Directors' Meeting

Mr. Eby made a motion to approve the minutes of January 20, 2011 Board of Directors' meeting. The motion was seconded by Ms. Cale and carried unanimously.

E. Financial Report

Mr. Charles reviewed the income and expenses for the reporting period of January 12, 2011 to February 1, 2011. Mr. Charles stated that the income to date is \$364,741.50 which is 51% of the projected revenue. Mr. Charles stated that the income for the reporting period is \$9,435.00. Mr. Charles advised that the year to date expenses are \$391,592.15 which is 54% of the projected amount. Mr. Charles stated that the expenses for the reporting period are \$12,598.93 which includes salary and OEC's for a two month period. Mr. Charles explained that the budget is \$26, 850 in the red for the year which puts the figures within the normal range at this time of year. Ms. Marvel made a motion to accept the financial report. The motion was seconded by Mr. Eby and carried unanimously.

II. Public Comment

None.

III. Action Items

A. Approval of Tournament Sanctions

Mr. Charles presented the Tournament Sanctions request. Mr. Charles reviewed the requests and advised that all sanction requests were in compliance with DIAA and the NFHS requirements. Ms. Cale made a motion to approve the sanctions. The motion was seconded by Ms. Coffing and carried unanimously.

B. Request for Waiver of DIAA Reg. 1009.2.4 by Salesianum for N.V.

Student and student's parents were in attendance to present this request. Student's parent requested a closed hearing. Brian Walker was also present. A representative of the school did not attend. Dr. Hawtof made a motion to go into executive session for the purposes of protecting the pupil file as an exception to the Freedom of Information Act. The motion was seconded by Ms. Cale and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 13 voting members present and participating to consider this matter. The parties confirmed that they understood and wished to proceed with less than the full Board present. All persons participating in this hearing were sworn in. All the documentation was made part of the record and in addition to the testimony given the Board considered and relied upon the written documentation provided.

Ms. Taylor made a motion to go into deliberation. The motion was seconded by Mr. Wagner and carried unanimously. Ms. Marvel made a motion to come out of deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. Dr. Hawtof made a motion to come out of executive session. The motion was seconded by Mr. Eliassen and carried unanimously. Mr. Eliassen made a motion to grant the waiver and allow Student to participate in Lacrosse this spring. The motion was seconded by Ms. Marvel. The motion failed by a vote of 5 yes (Leone, Marvel, Eby, Bedford and Elissen) and 8 no (Kobasa, Wagner, Cale, Coffing, Taylor, Love, Hawtof, and Long).

The Board recessed at 10:06 a.m. and reconvened at 10:20 a.m.

D. 1. Interim Waiver Request for 1009.2.4 by Appoquinimink HS for Z. L.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a

closed hearing for the purpose of protecting the privacy of the pupil file. Dr. Hawtof made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Cale and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed for the record that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parents from Mr. Charles, and the signed consent were made part of the record. Evidence was taken and deliberations were held

Dr. Hawtof made a motion to come out of executive session. The motion was seconded by Ms. Taylor and carried unanimously. Dr. Hawtof made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence of financial hardship presented the Student had met his burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

D. 2. Interim Waiver Request for 1009.2.4 by Pencader for D. M.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the privacy of the pupil file. Mr. Wagner made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Dr. Hawtof and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was

confirmed for the record that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parents from Mr. Charles, and the signed consent were made part of the record. Evidence was taken and deliberations were held

Dr. Hawtof made a motion to go into deliberation. The motion was seconded by Ms. Coffing and carried unanimously. Ms. Taylor made a motion to come out of deliberation. The motion was seconded by Mr. Bedford and carried unanimously. Ms. Taylor made a motion to come out of executive session. The motion was seconded by Mr. Eliassen and carried unanimously. Dr. Hawtof made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented the Student had met his burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Bedford and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

D. 3. Interim Waiver Request for 1009.2.4 by Hodgson for J. M.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the privacy of the pupil file. Ms. Leone recused herself and did not participate in the hearing. Dr. Hawtof made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Taylor and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed for the record that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parents from Mr. Charles, and the signed consent were made part of the record. Evidence was taken and deliberations were held

Dr. Hawtof made a motion to come out of executive session. The motion was seconded by Ms. Taylor and carried unanimously. Dr. Hawtof made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented the Student had met his

burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Long and carried by a vote of 12 – yes (Kobasa, Wagner, Bedford, Cale, Eliassen, Marvel, Coffing, Taylor, Love, Hawtof, Long, Holodick, and Eby) 1 – recused (Leone). Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

D. 4. Interim Waiver Request for 1008.2.7 by Smyrna for D.N.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the privacy of the pupil file. Ms. Coffing made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Leone and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed for the record that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parents from Mr. Charles, and the signed consent were made part of the record. Evidence was taken and deliberations were held

Dr. Hawtof made a motion to come out of executive session. The motion was seconded by Ms. Coffing and carried unanimously. Dr. Hawtof made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented the Student had met his burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Bedford and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

The Board Recessed at 11:07 a.m. and reconvened at 11:20 a.m.

III. J. Request for Waiver of DIAA Reg. 1009.2.4 by RLCA for B.S.

Scott Spence; father of student "Father"), Student, and Ken Howard; athletic director at RLCA were in attendance to present this request. Father requested an open hearing. Ms. Fontello explained that DIAA is a 20 member Board and has 19

voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 13 voting members participating and present to consider this matter. Ms. Fontello also explained the hearing procedures. The parties confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. Ms. Fontello then reviewed all documents pertaining to this hearing and the documents were included in the record. Father explained that his son had attended Centerville School and was mainstreamed to Salesianum School during his freshman year. Father explained that Student tried out for the football team at Salesianum and made the team. Father further explained that his son was having trouble with some of the kids on the football team and that it carried over into the classroom. Father stated that Student wanted to quit the team but that he made him stick it out. Father commented that Student only participated in two quarters the whole season. Father explained that after he got his son to open up to him about who the students were bullying him he went to the school and thought everything was ok. Father explained that his son was very nervous about attending Salesianum and his grades showed it. Father explained his son's medical issues, treatment, and his medications. Father commented that his son made the baseball team but that he broke his hand at the end of tryouts. Father commented that he did not get his son's report card till the end of July because he was not able to pay the tuition. Father enrolled him for the next school year thinking that his son wanted to continue to go there. Father stated that in his second year his son continued to experience the same bullying and after three weeks his son told him he could not go back to the school. Father stated that his wife works at Red Lion and that his daughter goes to school there. Father stated that it is very convenient for the family to take both kids to the same school that his wife works. Father stated that the transfer was a result of the extreme fear his son had at Salesianum. In a response to a question from the Board, Student explained his condition and the different medications. Father explained how the bullying made his son's anxiety worse and resulted in increased doctor visits and adjustments to medication which also resulted in increased doctor visits. Father stated that this also resulted in increased costs and added to their financial situation. Student stated that since he transferred to Red Lion he has been doing well and now he feels really comfortable.

Dr. Hawtof made a motion to go into deliberation. The motion was seconded by Ms. Marvel and carried unanimously. Ms. Coffing made a motion to come out of deliberation. The motion was seconded by Mr. Wagner and carried unanimously.

Dr. Hawtof made a motion to grant the waiver based on the testimony and information provided, Student established hardships including Student's medical conditions and the surrounding circumstances, which were beyond

Student's control. The motion was seconded by Mr. Long and carried unanimously.

L. Request for Waiver of DIAA Reg. 1009.2.4 by RLCA for A. S.

Denise Sills; mother of student ("Mother"), Student and Ken Howard; athletic director at RLCA were in attendance to present this request. Mother requested an open hearing. Ms. Fontello explained that DIAA is a 20 member Board and has 19 voting members. Ms. Fontello further explained that the law requires the affirmative vote of a majority of the voting members present in order to pass a waiver request. Ms. Fontello explained that there are 12 voting members participating and present to consider this matter. Ms. Fontello also explained the hearing procedures. Mother confirmed that they understood and wished to proceed. All persons participating in this hearing were sworn in. Ms. Fontello then reviewed all documents pertaining to this hearing and the documents were included in the record. Ms. Coffing recused herself and did not participate in this hearing. Mother explained that Student has been going to Red Lion since she was 3 years old and has been swimming since she was five. Mother stated that Student wanted to swim in high school and since Red Lion does not have a swim team they applied to Wilmington Charter School and Delaware Military Academy. Mother stated that Student was not accepted at Wilmington Charter and transferred to Delaware Military Academy. Mother also stated that while Student was at Delaware Military Academy she swam and also played soccer. Mother commented that Student did well her freshman year but that it was different from Red Lion. Mother stated that during her tenth grade year she started to see some changes in Student and that Student started complaining about not wanting to go to school and seemed depressed. Mother explained that Student started calling her during the day crying and saying that she wanted to come home. Mother stated that in October they started therapy. Mother stated that after Student started therapy she found out that Student was having anxiety and depression issues and they decided to return Student back to Red Lion. Mother stated that since Student has been back at Red Lion she has been doing well but that she is taking medication and is not swimming anymore.

Student commented that while she was at Delaware Military Academy she felt like a stranger and was uncomfortable. Student explained that she can be herself at Red Lion. Mother stated that Student's father attended a military college and thought it would be a good fit; however, they found that it was a good fit for Student.

Ms. Taylor made a motion to go into deliberation. The motion was seconded by Ms. Cale and carried unanimously. Dr. Hawtof made a motion to go back into open session. The motion was seconded by Ms. Leone and carried unanimously. Mr. Eliassen made a motion to grant the waiver request as it relates to girls' soccer based on the testimony and information provided, Student established a hardship beyond her control. The motion was seconded by Ms. Marvel and carried by a vote of 9 – yes (Kobasa, Bedford, Cale, Eliassen, Leone, Marvel, Love, Hawtof, Holodick), 2 – no (Long and Eby), and 2 – abstentions (Taylor and Wagner).

The Board recessed at 12:30 and reconvened at 12:40 p.m.

III D. 5. Interim Waiver Request for 1009.2.4 by Tatnall for R. W.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the privacy of the pupil file. Dr. Hawtof made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Ms. Cale and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed for the record that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parent from Mr. Charles, and the signed consent were made part of the record. Evidence was taken and deliberations were held

Dr. Hawtof made a motion to come out of executive session. The motion was seconded by Ms. Cale and carried unanimously. Dr. Holodick made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented the Student had met her burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

D. 6. Interim Waiver Request for 1009.2.4 by RLCA for E. B.

Ms. Fontello advised that this matter is being considered under modified procedures with the consent of the parent and that the parent has requested a closed hearing for the purpose of protecting the privacy of the pupil file. Dr. Holodick made a motion to go into executive session for the purpose of protecting the privacy of the pupil file as an exception to FOIA. The motion was seconded by Mr. Bedford and carried unanimously.

While in executive session, the hearing proceeded, evidence was taken, and the Board held deliberations. Ms. Fontello explained that this request is being

conducted under the modified hearing process and that there is a signed consent from the student's parent in this case in order to proceed under these modified procedures. Ms. Fontello advised that a full hearing is scheduled for the March 17, 2011 meeting should it be necessary. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to participate and the second to allow the student and parent not to appear. It was confirmed that Mr. Charles remained under oath. The waiver packet and supporting documents, the letter sent to the parents from Mr. Charles and the signed consent were made part of the record. Evidence was taken and deliberations were held

Mr. Wagner made a motion to come out of executive session. The motion was seconded by Mr. Bedford and carried unanimously. Mr. Bedford made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented the Student had met his burden of establishing a hardship and the information provided regarding the hardships that were beyond the control of the student. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for March 17 is cancelled.

E. AIA Request Re: WIAA Amicus Brief

Ms. Fontello explained DIAA's enabling legislation established a special fund for revenue and expenses. She explained that DIAA needs to determine if this is an appropriate expense. Ms. Fontello advised that she cannot guarantee that this litigation will be beneficial to DIAA but based on the information provided it may have some potential value for similar dispute if it arises in the future. Mr. Charles reminded the Board that this is a case regarding the Wisconsin Association versus Gannett regarding property rights surrounding tournament events. Mr. Charles explained that Wisconsin is asking other states if they would be willing to join in on an Amicus Brief in support of their case. Mr. Charles stated that they were asking for each State to give \$1,000.00 to support the cost of legal fees necessary to create the Amicus Brief. Mr. Wagner made a motion to support this request. The motion was seconded by Ms. Coffing and carried unanimously.

F. FY 12 Schedule of Board Meetings

Mr. Charles reviewed the DIAA Board meeting schedule and stated that there are two meetings that will fall on the third Thursday of the month. After some discussion the April 2012 meeting was moved to April 19, 2012. Ms. Cale made a motion to approve the updated Board meeting schedule. The motion was seconded by Ms. Coffing and carried unanimously.

G. Wilmington Christian Request

Mr. Charles explained that he received a letter from the Wilmington Christian School asking that we not schedule any tournament events that Wilmington Christian School would participate in on Sunday. Mr. Charles reviewed the upcoming basketball schedule. Ms. Love explained that it is tradition for their school not to practice or participate in sports on Sunday and that they honor the Sabbath day. Mr. Eby made a motion to accommodate Wilmington Christian School if possible. The motion was seconded by Ms. Marvel and carried unanimously.

H. Tatnall Self-Report

Mr. Charles explained that due to some confusion Tatnall used an eligible player in two basketball games. Mr. Charles stated that the athletic director thought that based on a waiver the player could play against an out-of-state team. Mr. Charles explained that the motion that was passed was to allow the student to play only in the independent conference games including similar out-of-state private schools in the conference. Mr. Charles stated that the school the student participated against is a public school and not in the independent conference. Mr. Charles also explained that due to a misunderstanding by the coach, the student also played against Red Lion. He explained that Tatnall self reported both games and Tatnall has forfeited both games. Mr. Charles stated that the issue has been addressed with the coach. Ms. Marvel made a motion to accept the self-report. The motion was seconded by Ms. Leone and carried unanimously.

IV. Executive Director Report

A. Legal

B. Misc.

Mr. Charles commented that Nike donated 39 boxes of balls and that we are donating them out to local clubs.

Mr. Charles commented on the Tim Tebow Law.

Mr. Charles commented on the Board appointments that are either vacant or expire this year which are Dr. Sole, Mr. Wagner, and Mr. Parson. Mr. Charles also commented on the reappointments which are Mr. Eby, Ms. Taylor, Mr. O'Neal, and Mr. Montano.

V. Other

VI. Public Comment

VII. Adjournment

Mr. Eliassen made a motion for the Board to adjourn at 2:02 p.m. The motion was seconded by Mr. Eby and carried unanimously.

Tina Hurley