

DIAA Board of Directors' Meeting Minutes  
Thursday, August 11, 2011 – 9:00 a.m.  
John W. Collette Education Resource Center

I. Opening

A. Call to Order

The meeting was called to order at 9:10 a.m. by Gerald Kobasa, DIAA Chairperson.

B. Roll Call

The following DIAA Board members were present: Gerald Kobasa, Terre Taylor, Joe Thomson, Edna Cale, Craig Eliassen, Catherine Marvel, Harvey Hyland, Susan Coffing, Dr. Rene Knight-Peguero, Woody Long, Dr. Mark Holodick, Ron Eby and Dr. Amelia Hodges. Kevin Charles; Executive Director, and Paula Fontello, Deputy Attorney General, were also in attendance. Curtis Bedford, Laura Leone, Dave Thomas, Pam Love, and Dr. Kevin Fitzgerald were unable to attend the meeting.

C. Approval of Agenda

Mr. Thomson made a motion to approve the agenda. The motion was seconded by Mr. Eby and carried unanimously.

D. Approval of Minutes of July 14, 2011 Board of Directors' Meeting

Mr. Eby made a motion to approve the minutes of July 14, 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 from July 1 to August 3. Mr. Charles advised that the income for the reporting period of was \$26,750 which was primarily from corporate contracts. Mr. Charles stated that the expenses for the reporting period are \$23,339 which includes carry over tournament expenses from FY 11, Student Leadership Conference expenses and dues. Mr. Charles reported that we are \$3,400 ahead which is unusual for this time of year. Mr. Long made a motion to accept the financial report. The motion was seconded by Mr. Hyland and carried unanimously.

II. Public Comment

None.

III. Action Items

A. Approval of Tournament Sanctions

Mr. Charles presented the 13 tournament sanction requests which include 8 for cross country, 1 boys basketball, 1, spring track and field, 1 volleyball, 1 indoor track, and wrestling. Mr. Charles reviewed the requests and advised that to the best of his knowledge the sanction requests were in compliance with DIAA and the NFHS requirements. Mr. Eby made a motion to approve the sanctions. The motion was seconded by Ms. Cale and carried unanimously.

B. Request for Waiver of 1009.2.4 by Appoquinimink for B. W.

Student and student's father were in attendance to present this request. Student's parent requested a closed hearing. Ms. Cale recused herself from the hearing. Dr. Holodick 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. Coffing 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 11 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.

Mr. Long made a motion to go into deliberation. The motion was seconded by Mr. Eby and carried unanimously. Mr. Eby made a motion to come out of deliberation. The motion was seconded by Mr. Harvey and carried unanimously. Mr. Eby made a motion to come out of executive session. The motion was seconded by Mr. Eliassen and carried unanimously.

Mr. Long made a motion to deny the waiver request because the Student failed to meet his burden of proof to establish a hardship. The motion was seconded by Mr. Thomson and carried by a vote of 10 – yes (Kobasa, Taylor, Thomson, Eliassen, Marvel, Hyland, Knight, Long, Holodick, and Eby) and 1 – no (Coffing).

IV. B. Misc.

Mr. Charles reported on the Student Leadership Conference that was held the first

weekend in August and 38 students from 25 different high schools attended. Mr. Charles stated that it was held at the Virden Center in Lewes. Mr. Charles reported that Sebrina Perialas, Linda Ogden, Ed Smith, John Smith, and Christy Boyd were the adult attendees. Mr. Charles stated that the conference went very well.

### III. J. Waiver for Pencader Students

Mr. Charles reported that we have two waiver requests on the agenda for students who have transferred from Pencader Charter School. He explained that the two students applied for a waiver after the Department of Education Charter School Accountability Committee made a recommendation to revoke Pencader's charter but before the State Board of Education voted and approved the school remaining open. Mr. Charles stated that he has also received phone calls from parents regarding the status of Pencader. Mr. Charles stated that had Pencader's charter been revoked and the school closed there would be an automatic exemption for students under the new amendments to the transfer rule which would make the students immediately eligible at the receiving school. However, Pencader's charter was not revoked and the school remains open. The exception would also apply if the school discontinued their entire sports program. Mr. Charles stated that he has spoken to the head of the school and was informed that Pencader will have athletics. Mr. Charles discussed the possible outcomes and wanted some guidance from the Board as to the action to be taken and whether the Board wanted to consider a waiver for Pencader students. The possibility of various waivers were discussed including whether the Board wanted to consider a blanket waiver for any Pencader student that transferred.

Mr. Eby made a motion to go into deliberation. The motion was seconded by Ms. Cale and carried unanimously. Mr. Long made a motion to come out of deliberation. The motion was seconded by Mr. Harvey and carried unanimously.

Mr. Holodick made a motion to approve a waiver for Pencader students that were in a similar situation as the two waiver requests that were pending before the Board who transferred based on the possibility of the school closing and approve a waiver for any Pencader student that initiated a transfer after the Department of Education announced the recommendation to revoke Pencader's charter and prior to State Board of Education's July 21, 2011 decision to keep Pencader open based on the fact that prior to the date of July 21 there were extenuating circumstances beyond the election, creation, or control of the family and student that led them to transfer to another school. It was clarified that any additional student that transferred from Pencader during the time frame outline above that is requesting a waiver may submit documentation of initiating a transfer prior to July 21 to be reviewed by the Executive Director. The Executive Director will review the documentation and make a determination if the request meets the terms of this general waiver and determine the student's athletic eligibility. It was further clarified that if the Executive Director receives any requests that are questionable or that he concludes do not fall within the general waiver granted today, that

request will be presented as an individual waiver request at a future meeting. The motion was seconded by Mr. Long and carried unanimously.

C. Request for Waiver of 1009.2.4 by St. Elizabeth for B. K.

Ms. Fontello noted for the record that the Board granted a general waiver request and Mr. Charles reviewed the documentation submitted and it was concluded that the general waiver granted today would cover this Student as a student who initiated a transfer from Pencader prior to July 21, 2010 based on the possibility of the school closing. Therefore this Student is immediately eligible and the waiver hearing is not necessary..

D. Request for Waiver of 1009.2.4 by St. Mark's High School for N. J.

Ms. Fontello noted for the record that the Board granted a general waiver request and Mr. Charles reviewed the documentation submitted and it was concluded that the general waiver granted today would cover this Student as a student who initiated a transfer from Pencader prior to July 21, 2010 based on the possibility of the school closing. Therefore this Student is immediately eligible and the waiver hearing is not necessary.

E. Interim Waivers by Executive Director

1. 1009.2.4.by Caravel for J. K.

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. Eliassen 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. Eby 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 September 8, 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 today. 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.

Mr. Thomson made a motion to come out of executive session. The motion was seconded by Mr. Hyland and carried unanimously. Mr. Thomson 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. Eby and carried unanimously. Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for September 8 is cancelled.

2. 1009.2.4 by Wilmington Christian for E. T.

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. Eby 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 September 8, 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.

Ms. Coffing made a motion to go into deliberation. The motion was seconded by Ms. Cale and carried unanimously. Mr. Eby made a motion to come out of deliberation. The motion was seconded by Ms. Cale and carried unanimously. Mr. Eby made a motion to come out of executive session. The motion was seconded by Ms. Coffing and carried unanimously. Mr. Eby 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. Thomson and carried unanimously. Ms. Fontello clarified that the waiver request is granted and the full hearing scheduled for September 8 is cancelled.

F. Proposal to Delay Implementation of Changes to 1008 & 1009.4.2.1

Mr. Charles explained that one of the new regulations that went into effect was a regulation affecting non-school day practice activities. Mr. Charles stated that once the athletic directors became aware of the new regulation it was clear that the athletic directors were confused on what the regulation required and that many athletic directors were not aware that this change took place. Mr. Charles explained that this awareness came after they had already developed fall sport practice schedules and communicated those to the parents. Mr. Charles stated that some expressed concerns the proposal did not follow the normal process as the proposed change did not go before the athletic directors in October. He clarified that the proposed changes were communicated to the schools, published as required and did meet the legal notice requirements. Mr. Charles commented that it appears that there may be some unintended consequences in this rule. Mr. Charles stated that the idea is to make sure there are some limits in place with respect to length of practice and rest between practices in order to facilitate a safe acclimatization for student athletes. Mr. Charles stated that this is becoming a growing nationwide concern and that the NFL have adopted restriction on practices as well as the NCAA in football. Mr. Charles stated that this is a heightened problem in football because the players wear a helmet and shoulder pads which both trap heat. Mr. Charles stated that he believes that this regulation could benefit from additional changes and clarifications and that the chairman of the Sports Medicine Committee supports delay in implementing the new regulation. Mr. Charles commented that this began as a proposal from the Sports Medicine Committee. Mr. Charles stated that the biggest issues with this rule are the requirement for a three hour break between practices and a limit of two hours for any one practice. Ms. Fontello clarified that the consequence of waiving the entire rule would be that the Board could no longer mandate the other elements in the rule such as the heat index and the access to drinking water requirement. Ms. Fontello suggested that this regulation would benefit from formatting changes and a very detailed frequently asked questions. Mr. Charles expressed concern that this rule takes an issue that is fairly specific to a single sport and applies it across the board to all sports and it may not be necessary. Mr. Charles stated that it would appear that there needs to be more research on the impact of this rule. Dr. Holodick suggested Mr. Charles working with athletic directors and coaches to clean this regulation up so that it is more consistent for all sports. After considerable discussion Dr. Holodick made a motion to make certain waivers for the 2011-2012 school year within the Regulation 1008 & 1009.4.2.1 regarding the following practices on non-school days: waive the two hour restriction on each practice session to allow that an individual practice session may extend up to but no more than three hours; waive the requirement for three hour continuous recovery time between practice sessions

to allow for one hour of continuous recovery time between practice sessions; and clarify that all other requirements apply including the 5 hour restriction that there shall be no more than five hours of practice time including a walk through in one day. The motion was seconded by Mr. Eliassen and carried unanimously.

G. Proposal by DIAA Volleyball Committee to Amend Bonus Points

Mr. Charles reported that the DIAA Volleyball Committee is proposing a change to the tournament manual affecting seeding and selection. Mr. Charles explained that regulation 1009.5.3.2 requires Board approval for all criteria and procedures for selecting and seeding participating teams in our state tournament. Mr. Charles stated that bonus points will not be awarded if a school plays a team more than two times. A team will still be awarded 2 points for a win regardless of the number of times the teams play. Mr. Eby made a motion to approve the proposal as presented. The motion was seconded by Mr. Long and carried unanimously.

H. Proposal by Field Hockey Committee Regarding Protective Face Shields

Mr. Charles explained that the NFHS implemented a new rule this year that requires protective eye wear to be worn at all times but the playing rule also allows for other protective devices to be worn like a face mask. Mr. Charles is suggesting the statement “The NFHS playing rules require that the protective eyewear must be worn at all times. NFHS playing rules also permit the wearing of a face mask but does not replace the requirement of protective eyewear. Players may elect to wear both; however, the protective eyewear was not tested for efficacy in this configuration. Mr. Thomson made a motion to approve the proposal. The motion was seconded by Ms. Taylor and carried unanimously.

I. Consideration of Revised DIAA Concussion Protocol

Mr. Charles reviewed the revised DIAA concussion protocol and stated that the new DIAA regulations require that the Board adopt a concussion protocol and the Board has previously done so. Mr. Charles stated that SB 111 requires minor modification to DIAA’s previous policy. Mr. Charles stated that beginning with next school year the student and parent must sign off that they have reviewed concussion information sheets. Mr. Charles stated that the pre-participation evaluation forms will also be revised to include this. Mr. Charles reported that starting with next year the coaches must take an online concussion course. Ms. Fontello commented on item #3 with regards to the term “potential” and that it is in conflict with wording in the actual legislation and should be removed from the regulation. Ms. Cale made a motion to

approve the revised Concussion Protocol. The motion was seconded by Ms. Taylor and carried unanimously.

IV. Executive Director Report

A. Legal - None

B. Misc. –

Mr. Charles reported on complaints by a constituent regarding the handling of the Caesar Rodney vs Dover fight by the DIAA Sportsmanship Committee and the DIAA Board of Directors.

Mr. Charles also reported on the 2011 State Champions in Sportsmanship. As selected by the DIAA Sportsmanship Committee. The 2011 winners are: Woodbridge, Seaford, and Milford were first time winners. Previous winners; McKean, A. I. DuPont, Conrad School of Science, Cape Henlopen, Lake Forest, Caravel Academy, Phillis Wheatley, Caesar Rodney, Wilmington Christian, Concord, Sussex Tech, Tower Hill School, and William Penn.

V. Other

VI. Public Comment

VII. Adjournment

Ms. Cale made a motion to adjourn at 12:15 p.m. The motion was seconded by Ms. Taylor and carried unanimously.

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Tina Hurley