

DIAA Board of Directors' Meeting Minutes
Thursday, December 8, 2011 – 9:00 a.m.
John W. Collette Education Resource Center

I. Opening

A. Call to Order

The meeting was called to order at 9:00 a.m. by Gerald Kobasa, DIAA Chairperson.

B. Roll Call

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

C. Approval of Agenda

Mr. Long made a motion to approve the agenda. The motion was seconded by Ms. Marvel and carried unanimously.

D. Approval of Minutes of November 10, 2011 Board of Directors' Meeting

Ms. Marvel made a motion to approve the minutes of November 10, 2011 Board of Directors' meeting. The motion was seconded by Mr. Long and carried unanimously.

E. Financial Report

Mr. Charles presented the financial report for the period of November 2, 2011 through November 30, 2011. Mr. Charles advised that the income for the reporting period was \$128,496.90 and the overall income is \$241,173.91. Mr. Charles stated that the income is mostly from tournament revenue, Officials Dues, Corporate Contracts and member dues. Mr. Charles stated that the expenses to date \$276,477.17 and for the reporting period are \$69,969.38. Mr. Charles stated that the expenses are mostly from tournament expenses. Other expenses include publications, insurance, officials expenses, and board expenses. Mr. Charles reported that the deficit is \$35,000.00 which is comparable to last year at this time. Mr. Eby made a motion to accept the financial report. The motion was seconded by Mr. Harvey and carried unanimously.

II. Public Comment

None.

III. Action Items

A. Approval of Tournament Sanctions

Mr. Charles presented the 12 tournament sanction requests which includes the volleyball all-star game that already took place, 1 volleyball, 2 indoor track, 5 basketball, and 4 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 Mr. Long and carried unanimously.

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

Student and student's parents were in attendance to present this request. Student requested a closed hearing. Mr. Eby 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 Mr. Long 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 10 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. Thomas made a motion to go into deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. Mr. Bedford made a motion to come out of deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Marvel made a motion to come out of executive session. The motion was seconded by Mr. Long and carried unanimously. Mr. Eliassen made a motion to go into executive session. The motion was seconded by Ms. Marvel and carried unanimously. Ms. Leone and Dr. Knight-Peguero arrived after the hearing began and did not participate in the hearing.

Mr. Bedford made a motion to approve the request based on establishing a hardship beyond the students control. The motion was seconded by Ms. Marvel and carried by a vote of 7 – yes (Kobasa, Bedford, Marvel, Hyland, Thomas, Coffing, and Love) and 3 – no (Eliassen, Long, and Eby).

D. Request for Waiver of 1009.2.4 by St. Thomas More for A. T.

Student and student's mother were in attendance to present this request. Student's mother requested a closed hearing. Mr. Eliassen recused himself and did not participate in the hearing. Ms. Marvel 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 Mr. Hyland 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.

Ms. Leone made a motion to go into deliberation. The motion was seconded by Ms. Coffing and carried unanimously. Ms. Marvel made a motion to come out of deliberation. The motion was seconded by Ms. Leone and carried unanimously. Mr. Hyland made a motion to come out of executive session. The motion was seconded by Dr. Knight and carried unanimously.

Mr. Eby made a motion to approve the request due to the hardship involving travel time to and from school. The motion was seconded by Mr. Hyland and failed by a vote of 5 – yes (Leone, Hyland, Coffing, Knight, Eby) and 6 – no (Kobasa, Bedford, Marvel, Thomas, Love, Long). As the motion failed to receive the required number of votes, the waiver was denied.

C. Request for Waiver of 1009.2.7 by Delcastle for E. E.

Student and student's father were in attendance to present this request. Student requested a closed hearing. Mr. Hyland 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 Dr. Knight 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 12 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. Coffing made a motion to go into deliberation. The motion was seconded by Mr. Long and carried unanimously. Mr. Eliassen made a motion to come out of deliberation. The motion was seconded by Ms. Leone and carried unanimously. Ms. Leone made a motion to come out of executive session. The motion was seconded by Mr. Hyland and carried unanimously.

Mr. Long made a motion to deny the request because the student had already participated in four years of athletics and failed to meet his burden to establish a hardship. The motion was seconded by Mr. Thomas and carried by a vote of 12 – yes (Kobasa, Bedford, Eliassen, Leone, Marvel, Hyland, Thomas, Coffing, Knight, Love, Long, and Eby).

G. Request by DIAA Boys' Lacrosse Committee to Fill Bracket

Mr. Charles explained that he received a request from the boys' lacrosse tournament committee to fill out the brackets for boys lacrosse. Mr. Charles explained the 16 team bracket and that boys' lacrosse only selects 12 teams. Mr. Charles commented that the boys lacrosse plays four games the first round instead of eight. Mr. Charles reported that this was established when there were less boys' lacrosse teams in the state. Mr. Charles stated that there are now over 40 teams in the state. Mr. Charles stated that the committee does not want to add another round but to simply fill the first round brackets. Mr. Charles stated that the athletic directors were in support of this as well as the coaches. Mr. Charles commented that because of the number of teams playing boys lacrosse has increased and he feels the brackets should be filled. Mr. Bedford made a motion to approve this request. The motion was seconded by Mr. Eby and carried unanimously.

H. Consideration of DIAA Sportsmanship Committee Final Report

Mr. Charles commented that the information presented involves the Dover/CR football game from November 10, 2010. Mr. Charles stated that the Sportsmanship Committee made a number of determinations in their December 2010 meeting regarding Caesar Rodney which had already been carried out because Caesar Rodney had a first round state tournament game. It was further

explained that the Dover football season was over so the items regarding Dover were able to be deferred to the already planned December 2010 meeting of the Sportsmanship Committee. Mr. Charles stated that the Committee considered the matter at their December 2011 meeting, however, additional information was needed and Dover requested an appeal of part of the penalties. Therefore the matter was continued at the March 2011 meeting and additional deliberations were necessary. During the March 2011 Sportsmanship Committee meeting the Committee required that by the end of June Dover submit a report of their actions. Mr. Charles explained that there was a delay and the report was received in July, the Committee subsequently considered the report and Dover's corrective actions during the August 1, 2011 meeting. Mr. Charles explained that final determination could not be made until the fall sport roster was received. Mr. Charles stated that the final roster was received at the end of August and considered at the Committee's September 1, 2011 meeting. Mr. Charles reported that this information was originally shared with the Board in October. Mr. Charles reviewed the report and summarized that the final result was that Dover High School made changes to their procedures and three coaches involved were not brought back to the school. The head coach was reprimanded and the entire Dover football staff was placed on probation for the entire 2011 football season. Mr. Charles reported that there were a number of players suspended before the first game and a number of senior athletes that were suspended during the 2010-11 season for first games in subsequent sports. Mr. Charles reported that during the regular season this year the Dover football team had zero ejections and zero incident reports and received a number of positive reports. Mr. Charles advised they did receive 1 ejection in the state tournament but the way it was handled by the player and coaching staff indicated change from the previous year and demonstrated an understanding of the past concerns. Ms. Fontello added that the Board was given the written concerns by the parent at the last meeting and that the matter was deferred until this month to allow the Board members adequate time to review all the information. She advised that she had spoken with the concerned parent and although the Board had the written concerns she highlighted some of the parent's concerns. She advised that one of the concerns was that there were some students who participated in the event and who were not ejected and did not receive a penalty. Ms. Fontello advised that she spoke to Mr. Charles regarding this concern and reviewed the reports and information presented. In looking at the reports it was noted that Dover High took action on three players who were identified by the original sub-committee that met and disciplined by Dover High. It was clarified that the parent's most pressing concern was that the penalties did not match the conduct and that some students who participated in the altercation had not served any penalty. It was also discussed that another primary concern raised was that the coaches left the school without penalty and the most severe conduct had not been addressed. The concern was that the Sportsmanship Committee did not address the conduct where a coach physically grabbed a student. After subsequent

discussion, it was clarified that Dover High School did not bring back three of the football coaches and that the Sportsmanship Committee held Dover High School's head coach responsible for all the actions of the assistants. It was also clarified that the coach in question is not coaching at any DIAA member school this year but that the Committee noted that the coach was subject to recall before the Sportsmanship Committee if he ever returned to coaching at a DIAA member school. It was further clarified that the head coach is ultimately responsible for all his assistant or volunteer coaches and it was noted that holding a head coach responsible for the conduct of his assistant and volunteer coaches was consistent with prior actions by the Committee. The presence of the assistance coaches on the field and Dover's corrective action plan were also reviewed. Recent amendments to the regulations were also reviewed.

Mr. Long made a motion to accept the Sportsmanship Committee's final report on the Dover/Caesar Rodney game. The motion was seconded by Mr. Bedford and carried by a vote of 11 – yes (Coffing, Knight, Thomas, Kobasa, Bedford, Hyland, Eby, Long, Love, Marvel, and Leone) 1 – abstention (Eliassen).

E. Request for Waiver of 1009.2.7 by Red Lion Christian Academy for N. C.

Ken Howard; athletic director at Red Lion Christian Academy, and Rosalind Toulson; were in attendance to present this request. The Board was advised that the student was not in attendance because student was not aware that he had to appear. Ms. Tolson confirmed that Student is 18 and advised that she is Student's guardian. Ms. Fontello reviewed the requirement in Regulation 1006.9.2.3 and explained that the regulation requires the appearance by the student and parent or guardian. Ms. Fontello also clarified that since Student is 18 he would be able to make his own decisions regarding the hearing. Ms. Tolson advised that she had reached Student and that he was available to participate via telephone. Ms. Leone made a motion that the student needs to be present for this hearing as opposed to being on the phone. The motion was seconded by Mr. Long and carried unanimously.

F. Interim Waivers by Executive Director

1. 1009.2.4 by A.I. DuPont HS for A. J. C.

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 Mr. Hyland 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 January 19, 2012 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. Hyland made a motion to come out of executive session. The motion was seconded by Mr. Bedford and carried unanimously. Mr. Long 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 Dr. Knight and carried by a vote of 12 – yes (Kobasa, Bedford, Marvel, Hyland, Thomas, Coffing, Eliassen, Long, Eby, Leone, Knight-Peguero, and Love) and 0 – no. Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for January 19, 2012 is cancelled.

2. 1009.2.7 by Mt. Pleasant for K. C.

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 Mr. Eliassen 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 January 19, 2012 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. Long made a motion to come out of executive session. The motion was seconded by Ms. Marvel and carried unanimously. Ms. Marvel 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 Ms. Leone and carried by a vote of 12 – yes (Kobasa, Bedford, Marvel, Hyland, Thomas, Coffing, Eliassen, Long, Eby, Leone, Knight-Peguero, and Love) and 0 – no. Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for January 19, 2012 is cancelled.

I. Request for Waiver of 1009.2.4 by A. I. DuPont HS for S. H.

Mr. Kobasa had to leave and the meeting proceeded with Mr. Eliassen as acting chairperson. Student and student's father were in attendance to present this request. Student's parent requested a closed hearing. Mr. Bedford 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 Mr. Hyland 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. Eby made a motion to go into deliberation. The motion was seconded by Mr. Long and carried unanimously. Ms. Marvel made a motion to come out of deliberation. The motion was seconded by Mr. Long and carried unanimously. Mr. Bedford made a motion to come out of executive session. The motion was seconded by Mr. Eby and carried unanimously.

Mr. Long made a motion to grant the request because Student met his burden and established that the actions of Father, coach, and DMA created a hardship beyond Student's control. The motion was seconded by Mr. Eby and carried by a vote of 9 – yes (Bedford, Eliassen, Leone, Marvel, Hyland, Thomas, Knight, Long, and Eby) 2 – no (Coffing and Love).

IV. Executive Director Report

B. Executive Directors Report

Mr. Charles reported on the fall tournaments and stated that the attendance was good. Mr. Charles reported on a spectator that was injured while leaving one of the games.

A. Legal

Ms. Fontello reported that there were two appeals pending before the SBE. She explained that the appeals are from the October 13, 2011 waiver hearings. Ms. Fontello further explained the process and that the written position papers are due on December 12, 2011. She advised that oral arguments are scheduled the week of December 19, 2011.

V. Other

VI. Public Comment

None.

VII. Adjournment

Mr. Eby made a motion to adjourn at 1:00 p.m. The motion was seconded by Ms. Leone and carried unanimously.

Tina Hurley