

DIAA Board of Directors' Meeting Minutes  
Thursday, October 11, 2012 – 9:00 a.m.  
John W. Collette Education Resource Center

I. Opening

A. Call to Order

The meeting was called to order at 9:05 a.m. by Terre Taylor.

B. Roll Call

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

C. Approval of Agenda

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

D. Approval of Minutes of DIAA September 13, 2012 Board Meeting

Mr. Long made a motion to approve the minutes of the September 13, 2012 Board meeting. The motion was seconded by Ms. Cale and carried unanimously.

E. DIAA Financial Report

Mr. Charles provided updates on the reporting period of September 1 through October 2, 2012. Mr. Charles stated that the revenue was \$50,418.00 which was primarily from member dues, tournament fees, and officials' dues. Mr. Charles explained that the expenditures for this period were \$57,478.15. Mr. Charles reported that the expenditures were primarily from the liability insurance, the Student Leadership Conference, and salary. Mr. Charles reported that DIAA is in the red at this time \$70,145.64 which is normal for this time of year. Mr. Charles stated that the contingency fund is now at \$545,456.00. Mr. Kobasa made a motion to accept the financial report. The motion was seconded by Dr. Fitzgerald and carried unanimously.

II. Public Comment

None

III. A Approval of Tournament Sanctions

Mr. Charles presented the 19 total sanction requests with five cross country, five indoor track, six wrestling, one basketball, one baseball and one track and field. Based on the information presented all the approved requests are in compliance with DIAA and NFHS rules and regulations. Mr. Eby made a motion to approve the items presented. The motion was seconded by Mr. Eliassen and carried unanimously.

C. Request for Waiver of 1009.2.4 by A. I. DuPont HS for M. G.

Student and Student's mother and father were in attendance to present this request. Student's parents requested a closed hearing. Dr. Fitzgerald 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. Harvey and carried unanimously. Ms. Fontello advised the parents that a Board member had a college intern shadowing her today and inquired if the Parents had any objection to the intern remaining in the room during the closed hearing. The parents stated that it was ok for the intern to stay in the hearing. It was confirmed that the intern was aware of the confidentiality of the pupil file.

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 14 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.

Dr. Holodick made a motion to come out of executive session. The motion was seconded by Ms. Leone and carried unanimously.

Mr. Kobasa made a motion to approve the request based on the information presented which established a medical hardship. The motion was seconded by Ms. Leone and carried by a vote of 14 – yes (Taylor, Bedford, Kobasa, Thomson, Cale, Eliassen, Leone, Marvel, Hyland, Love, Fitzgerald, Long, Holodick, and Eby) and 0 – no

E. Interim Waivers by Executive Director

1. 1009.2.4 by Newark for A. D.

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. Bedford recused himself from this hearing. Mr. Kobasa 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 modified hearing procedures with the consent of the parents 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 November 8, 2012 meeting should it be necessary. Ms. Fontello explained that Mr. Charles deviated from the normal procedures due to a lengthy agenda with a matter that was anticipated to take up a great deal of time and in an attempt to accommodate the larger number of waiver requests received for fall and winter sport athletes. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to be immediately eligible to participate and the second to allow the student and parent not to appear for the hearing 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 Dr. Fitzgerald 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. Long and carried by a vote of 13 – yes (Taylor, Kobasa, Thomson, Cale, Eliassen, Leone, Marvel, Hyland, Love, Fitzgerald, Long, Holodick, and Eby, and 0 – no, and 1 – recusal (Bedford). Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for November 8, 2012 is cancelled.

2. 1009.2.4 by Christiana HS for D. G.

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. Fitzgerald 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 procedures 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 November 8, 2012 meeting should it be necessary. Ms. Fontello explained that Mr. Charles deviated from the normal procedures due to a lengthy agenda with a matter that was anticipated to take up a great deal of time and in an attempt to accommodate the larger number of waiver requests received for fall and winter sport athletes. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to immediately be eligible 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.

Dr. Holodick made a motion to come out of executive session. The motion was seconded by Ms. Leone 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 his burden of establishing a hardship and the information presented established a hardship that was beyond the control of the student. The motion was seconded by Mr. Bedford and carried by a vote of 14 – yes (Taylor, Bedford, Kobasa, Thomson, Cale, Eliassen, Leone, Marvel, Hyland, Fitzgerald, Love, Long, Holodick, and Eby), and 0 – no. Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for November 8, 2012 is cancelled.

3. 1009.2.4 by Conrad for C. F.

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. Cale 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. Kobasa 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 procedures 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 November 8, 2012 meeting should it be necessary. Ms. Fontello explained that Mr. Charles deviated from the normal procedures due to a lengthy agenda with a matter that was anticipated to take up a great deal of time and in an attempt to accommodate the larger number of waiver requests received for fall and winter sport athletes. Ms. Fontello explained that Mr. Charles granted two interim waivers one allowing the student to be immediately eligible 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. Eby made a motion to come out of executive session. The motion was seconded by Mr. Eliassen and carried unanimously. Ms. Leone made a motion to grant the waiver and approve the two interim waivers granted by the Executive Director based on evidence presented on financial hardship 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. Fitzgerald and carried by a vote of 14 – yes (Taylor, Bedford, Kobasa, Thomson, Cale, Eliassen, Leone, Marvel, Hyland, Love, Fitzgerald, Long, Holodick, and Eby), and 0 – no. Ms. Fontello noted for the record that the waiver request is granted and the full hearing scheduled for November 8, 2012 is cancelled.

### III. G. Consideration of Moyer Academy's Requests for Academic Waivers

Ms. Fontello explained that this is a unique situation before the Board and stated that Kevin Charles is still under oath and the Board does not have individual waiver requests presented before it today from students. Ms. Fontello advised that Mr. Charles was going to talk about a situation where the Board may decide to take action. Mr. Charles stated that this is a very unusual situation and gave a brief background on the history of Moyer Academy. Mr. Charles stated that legally there have been three Moyer Academies and that the current Moyer Academy is called The New Moyer Academy. Mr. Charles stated that he was contacted by the athletic director/football coach expressing concern that a large number of students were not able to earn five credits last year. Mr. Charles then explained to the Board the academic and administrative challenges faced by Moyer and students in school year 2011-12. Mr. Charles then shared with the Board a follow up call from the principal, Glen Clark who stated that he was not going to pursue waivers and that he felt that the

students needed to focus on their academics. Mr. Charles stated that he then received a call from Keith Stevenson who is the head of the management team and stated that the situation that the students are currently in is largely due to the disfunction of the school during the school year 2011-12 and felt it was unfair to place these students in this situation. Mr. Charles explained that Dr. Stevenson was asking if DIAA would reconsider waivers for the students. DIAA subsequently received 15 waiver requests for individual students from the school. Mr. Charles stated that he spoke to John Carwell with the Department of Education who is the Educational Specialist with the Charter School Office who confirmed the difficulties and challenges faced by students at Moyer Academy last school year. Mr. Charles stated that the school cancelled the first football game due to a lack of eligible players. Mr. Charles also explained that after the information was received, as the Executive Director, he subsequently granted interim waivers for some of the students based on the information submitted and the school was able to play their second game. There were discussions surrounding consideration for a blanket waiver for the students that attended last year for fall and winter sports. Ms. Fontello explained the two options available under the regulations. Either that the Board could consider the 15 individual waiver requests or because this was a systematic problem at Moyer last year, the Board could consider a blanket waiver to any student that attended Moyer Academy last year for the passing grades and credits in order to qualify for participation in a fall sport. Mr. Eby made a motion to go into deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. Dr. Fitzgerald made a motion to come out of deliberation. The motion was seconded by Mr. Eliassen and carried unanimously. The Board took no action on this item.

The Board recessed at 10:30 a.m. and reconvened at 10:40 a.m.

#### F. Consideration of Interim Policy for International Students

Mr. Charles commented that he was following up from the September meeting and seeking clarification regarding the requested action from the September meeting. Mr. Charles explained that he was asking for policy guidance on how to interpret the existing regulations and some direction from the Board in how to proceed. Mr. Charles stated that he included a copy of 1009.2.8 in the packet. Mr. Charles stated that he would like to have an interpretation from the Board of 1009.2.8.1.2. Mr. Charles explained that he drafted a preliminary policy interpreting 2.8.1.2 based on the conversations he had in the Rules and Regulations Committee and based on some previous conversations with the Board. Ms. Fontello noted that the matter was on the agenda for action and asked Mr. Charles for clarification on whether he was asking the Board to take any action on the item. Mr. Charles clarified that he is not asking the Board to approve a regulatory change. Mr. Charles explained that if the Board chose to approve the draft policy as an FAQ that he could use to interpret 2.8.1.2 which

would give him some guidance in moving forward. Ms. Fontello clarified that the document presented was not complete yet and was just a draft.

Mr. Charles explained that there are two elements to the matters. Mr. Charles stated that they are dealing with students who are not a part of a CSIET program. Mr. Charles explained that a foreign exchange student is generally a J1 student and have a J1 visa and are in the United States for up to one year. An international student is generally on an a F1 visa and is in the United States for four years. Mr. Charles advised that there is a market for F1 international athletes. Mr. Charles explained that F1 students are ineligible because they do not meet all of DIAA's eligibility rules which include a requirement that the student live with their court appointed legal guardian or parent. Mr. Charles posed whether DIAA can address the issue with adopting a policy within the regulations that would enable a school to protect itself from those agents who want to bring in international athletes while allowing students who are truly here for an educational experience to be able to participate in sports at some level. Mr. Charles stated that the policy had been reviewed by the Rules and Regulations Committee at least in concept and is consistent with what they were comfortable with bringing to the member schools. Mr. Charles stated that the Rules and Regulations talked about a student attending a school for two years prior to being varsity and state tournament eligible and after that time would be eligible to play varsity. Mr. Charles stated that Mr. Neubauer did present this to the member schools at the DAAD meeting last week and will be meeting with the conferences in November. Ms. Fontello asked if the information had been shared with the heads of schools. Mr. Charles stated that once he has a document he will do that. Ms. Fontello explained that the way the regulation and policy are written, if an international student comes into a bonafide educational exchange program that is not recognized by CSIET in their junior year the transfer rule will not stop them from participating. She explained that section 2.8.1 in the current regulations state notwithstanding 2.2, 2.3, 2. 4 the student is eligible to participate upon their arrival. Ms. Fontello further clarified in response to questions that the executive director does have the ability under the regulations to take action in between meetings and also to interpret the regulations. Ms. Fontello commented that the executive director may interpret what a bonafide educational program would look like. Ms. Fontello stated that Mr. Charles was looking for approval from the Board so that he can proceed with developing the policy. Mr. Long made a motion for the executive director to continue to develop the policy in the direction that he has been going. Mr. Eliassen commented that he thinks we should try to create some varsity level eligibility for F1 students. The motion was seconded by Dr. Fitzgerald and carried unanimously.

#### IV. Executive Director Report

A. Ms. Fontello advised that there is one appeal pending from the August meeting and the oral argument is set for next week.

B. Misc.

Mr. Neubauer commented that the DAAD meeting went well and that the DAAD officers stepped up and did a great job. Mr. Neubauer also commented that there were two NIAAA leadership classes and as well as the Legal level 3. Mr. Neubauer stated that he had a sample trophy on display at the conference for the schools to review.

Mr. Charles reported that he received a request from Business Law Ventures to hold an all-star football game for juniors. Mr. Charles explained that he responded that our regulations do not permit this because these students have not used up all their eligibility in that sport.

Mr. Charles reported on another request from Under Armour asking if they could hold a camp by invitation only looking for elite players. Under Armour would pay for travel and the students would receive Under Armour products. Mr. Charles shared his concerns about this program with the Board. Mr. Neubauer stated that DIAA regulations 1009.6.3.2 and 1009.9.1.3 refer to this.

Mr. Charles reported that he received a call from the University of Maryland Harvard School of Public Health that they would like to do an interview on our youth sports concussion law. Mr. Charles explained that nationally the states have almost all went in the same direction that DIAA has in adopting a concussion law. Mr. Charles also commented on a movie titled "Head Games" that is out which focuses on concussions in youth sports.

Mr. Charles then reviewed an article in a NFHS publication on Gracie Firestone.

V. Other

Dr. Holodick reminded the Board about a presentation that Mr. Thomson presented to the Board regarding DIAA utilizing some consultants and other possible vendors to help support our cause around sportsmanship and other initiatives. Dr. Holodick stated that he is not sure where this stands and is suggesting that the executive director investigate and bring more information to the Board. Mr. Charles stated that he did submit through Dr. Haberstroh a request to increase the DIAA spending. Mr. Charles stated that he would then have to identify sources of revenue to make sure the consultants and vendors can be paid for.

The Board recessed at 11:40 a.m. for lunch and reconvened at 12:00 p.m.



Mr. Charles led a discussion on the Special Olympic program called "Project Unify: and the desire to pursue a Unified Sports interscholastic program in Delaware.

VI. Public Comment

None.

VII. Adjournment

Ms. Fontello stated that there was no action taken on Item III. D. Request for Waiver of 1009.2.6 by Dickinson HS for J. C. Ms. Fontello noted for the record that no one appeared for the hearing. She explained that because there was no one present for the waiver request the Board was unable to consider the matter because of the DIAA regulation that requires mandatory appearance by the student and their parent. Dr. Fitzgerald made a motion to adjourn at 12:20 p.m. The motion was seconded by Mr. Eliassen and carried unanimously.

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Tina Hurley