



SPONSOR: Sen. Poore & Rep. Longhurst & Sen. Buckson &
Rep. Dukes
Sens. Pettyjohn, Richardson, Walsh; Reps. Cooke,
D. Short

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 281

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE DELAWARE
INTERSCHOLASTIC ATHLETIC ASSOCIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 302, Title 14 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 302. Definitions.

4 As used in this chapter:

5 (1) “Advanced practice registered nurse” means as defined in § 1902 of Title 24.

6 (~~1~~) (2) “Association” means the Delaware Interscholastic Athletic Association.

7 (3) “Athletic advantage” means a student transfers from a sending school to a receiving school for any of the
8 following reasons:

9 a. To seek a superior team.

10 b. To seek a team more compatible with the student’s abilities.

11 c. Dissatisfaction with the student’s position or playing time at the student’s sending school.

12 d. To follow a coach to another school at which the coach is employed.

13 e. Dissatisfaction with a philosophy, policy, method, or action of a coach or administrator pertaining to
14 interscholastic athletics.

15 f. To avoid disciplinary action that another state athletic association has imposed.

16 g. To avoid disciplinary action that the sending school imposed and is related to or affects interscholastic
17 athletic participation.

18 (4) “Attendance zone” means a geographical area established by law or by the governing body of a public
19 school that entitles a student to attend a specific public school.

20 (~~2~~) (5) “Board” means the Board of Directors of the Delaware Interscholastic Athletic Association.

21 (~~3~~) (6) “Department” means the Delaware Department of Education.

- 22 (7) “Executive Director” means the Executive Director of the Delaware Interscholastic Athletic Association.
- 23 (8) “Guardian” means an individual that a court order has established is responsible for the care and
24 management of a student.
- 25 (4) (9) “Health-care provider” means a licensed physician (doctor of medicine or doctor of osteopathic
26 medicine), physician, a physician assistant, or an advanced practice registered nurse, or another licensed health-care
27 professional, each of whom who is trained and experienced in the evaluation, management, and care of concussions.
28 concussions, or such other licensed health-care professional who is trained and experienced in the evaluation,
29 management, and care of concussions.
- 30 (10) “HIB” means harassment, intimidation, or bullying.
- 31 (5) (11) “Member school” means a school that is a full or associate member school of the Association.
- 32 (12) “Participate” means to take part in an interscholastic athletic sport tryout, practice, scrimmage, or contest.
- 33 (13) “Physician” means as defined in § 1702 of Title 24.
- 34 (14) “Physician assistant” means as defined in § 1770A of Title 24.
- 35 (15) “Receiving school” means the school that a student transfers into after withdrawing from the student’s
36 sending school.
- 37 (16) “Relative caregiver” means an adult who does not have legal custody or guardianship of a student but is,
38 by blood, marriage, or adoption, any of the following to the student:
- 39 a. Great-grandparent, grandparent, or step-grandparent.
- 40 b. Great-aunt, aunt, step-aunt, great-uncle, uncle, or step-uncle.
- 41 c. Step-parent.
- 42 d. Sibling, step-sibling, or half-sibling.
- 43 e. Niece or nephew.
- 44 f. First cousin or first cousin once removed.
- 45 (17) “School day” means each day that students attend school during a regular academic school year,
46 including a partial day in which students attend school for instructional purposes, as adopted by a school’s district or
47 governing body. “School day” does not include weekends, holidays, summer school, or other days that are not part of a
48 school’s regular academic year.
- 49 (6) (18) “Secretary” means the Secretary of the Delaware Department of Education.
- 50 (19) “Sending school” means the school from which a student transfers to enroll in a receiving school.
- 51 (7) (20) “State Board” means the State Board of Education.

52 (21) “Transfer” means a student has officially withdrawn from a sending school and officially enrolled in a
53 receiving school under the receiving school’s established registration process.

54 Section 2. Amend § 303, Title 14 of the Delaware Code by making deletions as shown by strike through and
55 insertions as shown by underline as follows:

56 § 303. Regulations, policies, and procedures.

57 (b)(1) The Board, in consultation and cooperation with the Department, shall develop regulations relating to
58 secondary and middle school interscholastic athletics. The regulations must include at least all of the following:

59 d. Eligibility requirements for a student to participate in interscholastic ~~athletics~~: athletics, except as under
60 § 313, § 314, or § 315 of this title.

61 e. Requirements for a student who participates in interscholastic athletics and nonschool ~~competitions~~.
62 competitions, except as under § 313, § 314, or § 315 of this title.

63 Section 3. Amend § 312, Title 14 of the Delaware Code by making deletions as shown by strike through and
64 insertions as shown by underline as follows:

65 § 312. Board decision and appeal; State Board’s duties.

66 (a) The Board shall decide on each controversy involving a regulation under this chapter, including a waiver of the
67 regulations promulgated under this ~~chapter, or a waiver of the ineligibility under § 410(a) of this title.~~ chapter. The Board
68 may not decide on a controversy involving a waiver under § 315 of this title, except as under § 316 of this title.

69 (b) The Board shall issue in writing its decision in a controversy involving a ~~waiver~~ waiver of a regulation
70 promulgated under this chapter within 20 days from the date of hearing.

71 (c) A party to a controversy may appeal the Board’s ~~decision~~ decision, except a decision under § 316 of this title,
72 to the State Board by doing all of the following:

73 (1) Stating the party’s grievance in a petition.

74 (2) ~~Ensure~~ Ensuring that the petition is served on the ~~Association’s executive director~~ Executive Director by
75 certified or registered mail within 30 days after receiving notice of the decision.

76 Section 4. Amend Chapter 3, Title 14 of the Delaware Code by making deletions as shown by strike through and
77 insertions as shown by underline as follows:

78 § 313. Transfers; eligibility; periods of ineligibility.

79 (a) Immediate eligibility.

80 (1) A student who transfers schools is immediately eligible to participate in an interscholastic athletic sport in
81 which the student has not previously participated, upon enrollment at the student’s receiving school.

82 (2) A student who transfers schools is immediately eligible to participate in an interscholastic athletic sport in
83 which the student has previously participated, upon enrollment at the student's receiving school, if all of the following
84 apply:

85 a. The student did not participate in the interscholastic athletic sport during the previous 180 school days.

86 b. The student is released from the student's sending school.

87 c. The student has completed the enrollment process into the student's receiving school.

88 d. The student is pursuing an approved course of study at the student's receiving school.

89 e. The student meets all other Association eligibility requirements.

90 (3) A student who is placed with the Department of Children, Youth and their Families is immediately eligible
91 to participate in an interscholastic athletic sport upon enrollment at the student's receiving school.

92 (4) First transfer; immediate eligibility. A student who has participated in interscholastic athletics at the high
93 school level during the previous 180 school days may transfer 1 time to an Association member school and be
94 immediately eligible to participate in interscholastic athletics at the student's receiving school, if both of the following
95 criteria are met:

96 a. The student's transfer is before the earliest allowable start date of the fall interscholastic athletic sport
97 season of the student's third year of eligibility at the high school level.

98 b. The student does not participate in a contest in the same interscholastic athletic sport for different
99 schools during the same school year.

100 (b) Subsequent transfers; period of ineligibility.

101 (1) A student is subject to a period of ineligibility of 30 days or ½ of the maximum number of contests,
102 whichever is less, for each interscholastic athletic sport in which the student participated during the previous 180
103 school days, if either of the following apply:

104 a. The student has already transferred schools at least 1 time. A student under this paragraph is not
105 eligible to participate in the interscholastic athletic sport's post-season.

106 b. The student transfers after the earliest allowable start date of the fall interscholastic athletic sport
107 season of the student's third year of eligibility at the high school level.

108 (2) A period of ineligibility under this subsection begins on the receiving school's first day of competition for
109 the relevant interscholastic athletic sport.

110 (3) To calculate the maximum number of contests under paragraph (b)(1) of this section, the Association shall
111 round down to the nearest whole number if the number of contests is not divided evenly.

112 (c) Applicability. Section 313, § 314, § 315, and § 316 of this title apply to all of the following:

113 (1) A student enrolled in grades 9 through 12.

114 (2) Each student at each level of participation in an interscholastic athletic sport, not only the varsity level.

115 (3) Each Association-sanctioned sport in which a student who transfers schools participated during the 180
116 school days preceding the transfer.

117 (d) Tracking form. The receiving school of a student seeking eligibility to participate in interscholastic athletics
118 must submit to the student's sending school a tracking form to initiate the eligibility process. The sending school shall
119 complete the tracking form and submit the completed form to the receiving school and the Executive Director. The tracking
120 form must indicate whether immediate eligibility applies or which, if any, of the exceptions under § 314 of this title apply.

121 Section 5. Amend Chapter 3, Title 14 of the Delaware Code by making deletions as shown by strike through and
122 insertions as shown by underline as follows:

123 § 314. Exceptions to ineligibility.

124 (a) A period of ineligibility under § 313 of this title does not apply and a student is not required to seek a waiver of
125 ineligibility if any of the following apply:

126 (1) McKinney-Vento Education for Homeless Children and Youth Act. The student's transfer is the result of
127 the student becoming homeless, as "homeless children and youths" is defined under the McKinney-Vento Education
128 for Homeless Children and Youths Act, 42 U.S.C. § 11434a(2).

129 (2) Court action. The student's transfer is the result of court action. "Court action" means an order from a
130 court that affects a legally committed student. A copy of the court order signed by a judge, commissioner, or master of
131 a court of competent jurisdiction is required to meet this exception. A petition for the transfer of custody or
132 guardianship, an affidavit, or a notarized statement signed by the affected parties is not sufficient to meet this
133 exception.

134 (3) Caregivers School Authorization. The student's transfer is under § 202(f) of this title.

135 (4) Unsafe School Choice Option Policy. The student's transfer is based on the student attending a sending
136 school that is a persistently dangerous school or the student is the victim of a violent felony while in or on the grounds
137 of the sending school, and the student opts to transfer to safe school in the same school district under the Unsafe School
138 Choice Option Policy under Regulation 608 of Title 14 of the Delaware Administrative Code.

139 (5) HIB transfer. The student's transfer is because the student experienced harassment, intimidation, or
140 bullying at the student's sending school that resulted in the implementation of a process or policy under Chapter 41 of
141 this title. This exception is established through documentation from the student's sending school that the sending

142 school investigated a complaint under Chapter 41 of this title and determined that the proper action to remediate the
143 complaint is an alternative placement or school transfer. Neither the Board nor the Executive Director may hold a
144 hearing or investigate whether the student was harassed, intimidated, or bullied.

145 (6) Change at sending school. The student's sending school has closed or discontinued all of the school's
146 interscholastic athletics sports programs. To establish that the sending school discontinued all of the school's
147 interscholastic athletics sports programs, the student or sending school must submit to the receiving school and
148 Executive Director documentation demonstrating that the sending school's interscholastic athletics sports programs
149 have been discontinued.

150 (7) Change in residence. The student's transfer follows a change in the student's primary residence, and the
151 change in residence was made with the intent that it is permanent and not primarily for athletic purposes. A student is
152 eligible if any of the following apply:

153 a. Military assignment. The student's change in residence is directly related to an order from a branch of
154 the United State military service, including a reserve component.

155 b. In-state change of residence. The student's change in residence is due to the student's family changing
156 legal residence.

157 1. "Legal residence" means the family's legal habitation is fixed and the student's parent or guardian
158 has the present intention to reside permanently at that habitation.

159 2. The family must have sold, rented, or disposed of the family's previous residence, and no member
160 of the family continues to reside in the previous residence.

161 3. The student may not maintain dual residency for the purpose of athletic eligibility.

162 4. A change in residence under paragraph (a)(7)b. of this section includes enrollment in a new school
163 district or attendance zone. A student's move within the student's current school district does not apply if the
164 student is not required to transfer schools.

165 5. Proof of the change in residence must be provided. Methods to prove a change in residence
166 include a utility bill, closing documents, voter registration, or other legal documentation. A change in address
167 on a drivers license, without more, is insufficient to prove a change in residence.

168 c. Out-of-state change in residence. The student changes residences from out-of-state and into this state,
169 and is attending a high school in this state for the first time. Paragraphs (a)(7)b.1. through 5. of this section apply
170 to meet this exception.

171 (b) A student or the student's parent, guardian, or relative caretaker shall submit to the Executive Director the
172 documentation required for the exception under this section that applies to the student.

173 (c) An exception under this section does not apply if the student transferred for athletic advantage.

174 Section 6. Amend Chapter 3, Title 14 of the Delaware Code by making deletions as shown by strike through and
175 insertions as shown by underline as follows:

176 § 315. Waivers of ineligibility.

177 (a) Waiver. The Executive Director shall waive ineligibility under § 313 of this title if the Executive Director
178 determines that all of the following criteria have been established:

179 (1) Strict enforcement of ineligibility does not serve to accomplish the purpose of this chapter.

180 (2) The spirit of ineligibility under this chapter is not offended or compromised by waiving ineligibility.

181 (3) The principle of educational balance over athletics is not offended or compromised by waiving
182 ineligibility.

183 (4) Waiving ineligibility does not result in a safety risk to a teammate or competitor.

184 (b) Written decision. The Executive Director shall issue in writing the Executive Director's decision regarding a
185 request to waive ineligibility under this chapter. The Executive Director must issue the written decision no later than 15
186 days after the application for a waiver is submitted. A notice of the right to appeal under § 316 of this title must be included
187 in the written decision.

188 (c) Burden of proof. The student who has applied for a waiver under this section has the burden of proof in
189 establishing that the criteria under subsection (a) of this section are met.

190 (d) Application requirements. An application for a waiver under this section must include all facts relevant to the
191 request, including sufficient information for the Executive Director to reach a determination. If an application does not
192 include all the required documentation under subsection (e) of this section, the Executive Director may request the missing
193 documentation. If the student does not provide the missing documentation, the Executive Director may refuse to process the
194 application or may accept the student's reason for not providing the missing documentation.

195 (e) Documentation required. An application for a waiver under this section must include all of the following
196 documentation:

197 (1) The student's official transcripts from eighth grade through the current school year and most recent report
198 card or grade report, if the student's most recent grades are not included in the transcripts.

199 (2) The student's attendance records for the previous 2 years.

200 (3) A letter from the principal or headmaster of the student's sending school, either supporting or not
201 supporting the waiver request.

202 (4) A letter from the student's parent, guardian, or relative caregiver, explaining in detail the circumstances
203 for requesting a waiver. If the student is 18 years or older, the student or the student's parent, guardian, or relative
204 caregiver may provide the letter.

205 (5) Documentation of withdrawal from the student's sending school, if applicable.

206 (6) Documentation of acceptance into the student's receiving school, such as an acceptance letter from the
207 receiving school.

208 (7) School district choice enrollment program documents that show the date of withdrawal and the date of
209 enrollment, if applicable.

210 (8) The school calendar for the student's receiving school.

211 (9) The student's medical records, if applicable.

212 (10) The student's legal documentation, if applicable.

213 (11) The student's individualized education plan, if applicable.

214 (12) Certification from the student's sending school and receiving school that the student is transferring for
215 the reasons indicated on the student's application for a waiver, and that the student's transfer is not motivated by an
216 athletic advantage, except as under subsection (g) of this section. If the student is unable to obtain the certification from
217 either school, the student may submit a written statement explaining why the student is unable to obtain the
218 certification.

219 (f) Date of filing. An application for a waiver under this section must be filed at least 30 days prior to the start of
220 the interscholastic athletic sport season in which the student wishes to participate.

221 (g) Transfer for athletic advantage. A student who transfers from the student's sending school to receiving school
222 for athletic advantage may apply for a waiver under this section.

223 Section 7. Amend Chapter 3, Title 14 of the Delaware Code by making deletions as shown by strike through and
224 insertions as shown by underline as follows:

225 § 316. Appeal of Executive Director's decision.

226 (a) A party to a controversy may appeal the Executive Director's decision under § 315 of this title to an appeals
227 panel comprised of 3 Board members. The Board's chair shall select the 3 members of the appeals panel on a per case
228 basis.

229 (b) To request an appeal, a party to a controversy must do all of the following:

230 (1) State the party's grievance in a petition.
231 (2) Ensure that the petition is served on the Executive Director by certified or registered mail within 15 days
232 after receiving notice of the Executive Director's decision.

233 (c) In considering an appeal, the appeals panel shall do all of the following:

234 (1) Review the documents that the Executive Director considered in making the decision on the waiver.

235 (2) Overturn the Executive Director's decision only if the Board finds that the decision is not supported by
236 substantial evidence or is arbitrary or capricious.

237 (3) Issue a decision affirming or overturning the Executive Director's decision not later than 30 days after
238 receiving a petition under subsection (b) of this section.

239 (d) The appeals panel may not do either of the following:

240 (1) Consider evidence or documents that were not part of the information that the Executive Director
241 considered in making the Executive Director's decision.

242 (2) Hold a hearing on the appeal or ask questions of the student who is the subject of the appeal.

243 Section 8. Amend Chapter 3, Title 14 of the Delaware Code by making deletions as shown by strike through and
244 insertions as shown by underline as follows:

245 § 317 Forms.

246 The Executive Director shall develop or approve forms necessary to implement § 313, § 314, § 315, and § 316 of
247 this title. The Executive Director may develop or approve other forms as needed to implement this chapter.

248 Section 9. Amend § 410, Title 14 of the Delaware Code by making deletions as shown by strike through and
249 insertions as shown by underline as follows:

250 § 410. Interscholastic sports. [Repealed.]

251 ~~(a) A student enrolled in grades 10 through 12, inclusive, in a receiving local education agency shall not be eligible~~
252 ~~to participate in interscholastic athletic contests or competitions during the first year of enrollment in any receiving local~~
253 ~~education agency if the student was enrolled in a different receiving local education agency during the preceding school~~
254 ~~year unless the interscholastic sport in which the student wishes to participate is not offered in the receiving local education~~
255 ~~agency in which the student was enrolled in the previous school year.~~

256 ~~(b) The Board of Directors of the Delaware Interscholastic Athletic Association may waive the ineligibility in~~
257 ~~subsection (a) of this section if the Board of Directors determine, in accordance with its rules and regulations, that the~~
258 ~~standards for granting a waiver have been met.~~

259 (e) A waiver of subsection (a) of this section is not required for a student who transfers to and enrolls in grades 10
260 through 12 in a receiving local education agency that is a charter school:

261 (1) In the charter school's first year of operation; or

262 (2) In the charter school's first year of serving grades 10, 11, or 12.

SYNOPSIS

This Act is a result of the work of the Delaware Interscholastic Athletic Association ("DIAA") Task Force ("Task Force"). The 152nd Delaware General Assembly passed Senate Concurrent Resolution 19 establishing the Task Force to study and make findings and recommendations to best address the needs of student athletes and ensure DIAA's effective and efficient functioning. The Task Force met over 8 months to discuss the most pressing issues facing DIAA. This Act addresses one of the identified issues: the waiver process when a student transfers from one school to another and wishes to play interscholastic athletics.

Under current regulations, a student who transfers schools and wishes to participate in sports must complete a period of ineligibility unless the student meets certain conditions or qualifies for an exception. In order to meet the conditions or exception or otherwise request a waiver of ineligibility, the student must go through a waiver process. The student applies for a waiver, DIAA's Executive Director makes an interim decision on the waiver, and the DIAA Board of Directors ("Board") ratifies or rejects the Executive Director's interim decision. If the Board has any questions about any part of the waiver application or interim decision, they reject the interim decision and schedule a hearing for the student to testify to answer the additional questions. By the time the Board issues a final decision on the waiver, the student has lost time to play sports and the Board has spend a great deal of its meeting time on the hearing, including going into executive session to maintain a student's privacy.

Among other matters relating to the waiver process, the Task Force discussed the amount of time that the waiver process takes, both from the students' and Task Force's perspective, and how to make the process more efficient and more equitable for the students. The Task Force concluded that moving the waiver process out of regulations and into the Delaware Code is the most efficient way to streamline the process, thereby benefitting student athletes and allowing the Board more time to focus on its other work. This Act is a combination of existing regulations, regulations that the Board proposed but were not enacted during the 8 months that the Task Force met, and the Task Force's discussions on how to best improve the waiver process.

Under this Act, the Executive Director makes the final decision on a waiver, subject to an appeal of a 3-member panel comprised of Board members. Shifting the final decision-making to the Executive Director removes duplicative steps, and specifying deadlines are to ensure as speedy a conclusion as possible. The Executive Director must issue their decision within 15 days of receiving a waiver, and a student may appeal the decision to the appeals panel within 15 days of receiving the decision. The appeals panel must issue its decision within 30 days of receiving an appeal. The appeals panel may not hold a hearing on an appeal or otherwise ask questions of a student who seeks an appeal; the panel must make its decision based on the documentation that the Executive Director used to make their decision.

This Act organizes the process into the following categories:

- Immediate eligibility applies to circumstances under which a student is immediately eligible to participate in sports at the school into which the student transfers ("receiving school"). A waiver is not required for immediate eligibility. Immediate eligibility applies if the student has not previously played the sport the student seeks to play at the receiving school, if the student has been placed in the custody of the Department of Services for Children, Youth and their Families, or it is the student's first transfer and the student did not play the sport during the 180 days prior to transferring. The receiving school of a student who qualifies for immediate eligibility must initiate the completion of a tracking form, to document the transfer and reason for immediate eligibility.

- Periods of ineligibility apply to a student's subsequent transfer. A student is subject to a period of ineligibility of 30 days or ½ of the maximum number of contests, whichever is less. A student may seek a waiver of the period of ineligibility.

- Exceptions to periods of ineligibility are provided in this Act. A student who meets an exception is not required to seek a waiver, but must provide documentation relevant to the exception. Seven types of exceptions are available,

including transferring schools due to homelessness, court action, or a change in the student's residence due to military assignment. Each exception has its own requirements.

- Defining the waiver process, including deadlines, required documentation, and the factors required for granting a waiver. To approve a waiver, the Executive Director must consider the 4 factors under § 315(a), Title 14. The 4 factors do not include "hardship," which has been a factor under the current regulations. The Task Force discussed that the hardship factor was too often an unreasonably difficult standard for a student to meet, resulting in a large percentage of the waivers sought and failing to meet the purpose of the ineligibility and waiver process, which is to discourage transfers for athletic reasons, multiple transfers, or transfers after a sports season has begun. The remaining 4 factor do meet this purpose.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Poore