

CIAC Executive Director Recommendations for September 29, 2020 Board of Control Meeting

Dear CIAC Board of Control Members,

In advance of tomorrow's meeting, I would like to provide you with my recommendations for action item motions and my rationale for each. Hopefully, having this information in advance will allow for an efficient meeting that does not take more than 30 minutes of your time tomorrow.

Recommended Motions:

- ***Motion: To establish an alternative season in the second semester for sports that do not complete at least 40% of their scheduled games in their regularly scheduled season, if supported by COVID metrics; and, that the season limitation dates for the beginning and end of the 2020-2021 winter and spring seasons be amended to accommodate the second semester alternative season.***
- ***Motion: To waive the out-of-season rule for football and allow coaches access to their student-athletes to conduct low to moderate risk school-sponsored activities during the CIAC fall competition season ending on November 21.***
- ***Motion: To accept the position statement on 11v11 football this fall as stated.***
 - ***Position Statement on 11v11 Football:***

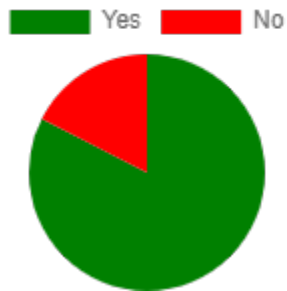
The National Federation of State High School Associations (NFHS), the CIAC, and the CT DPH have all deemed football to be a “higher risk” activity for reasons related to the COVID-19 pandemic. The CT DPH has recommended that 11v11 full contact football not be played this fall and the CIAC, after attempting to lower football’s risk level through COVID mitigating strategies, has aligned with DPH’s recommendation in deciding to not play 11v11 full contact football this fall. Therefore, the CIAC does not recommend 11v11 full contact football be played in any capacity by member schools this fall. Additionally, the CIAC cautions that school districts may assume a liability risk for negligence if a district merely loans equipment to student-athletes for play in an independent 11v11 full contact league. Liability is especially possible if the school district is loaning equipment that it knows will be used to perform activities that DPH has expressly advised against (e.g., equipment that is designed for use in connection with 11-on-11 football and/or football that includes tackling and line play).
- ***Motion: To place basketball in the moderate risk category to align with NFHS classification guidance and based on the successful engagement of high school students in summer and fall basketball competition without any evidence of increased COVID transmission risk.***

Detail and Rational for Each Motion

Establishment of an Alternative Season

86% (160 of 186) of member CIAC schools responded to my survey seeking interest in establishing an alternative season for sports that are not able to compete during their regularly scheduled season. The results indicate that 82.5% (132) of our member schools are in favor of establishing an alternative season and 17.5% (28) are opposed. In addition to the overwhelming support revealed by the survey, I have received a proposal to establish a spring alternative season from the ECC and the FCIAC.

Overall Results - 86% of Member Schools (160 of 186) Have Responded:



- Yes - 132 (82.50%)
- No - 28 (17.50%)

By League:

- BL (8 Responses) - 5 Yes / 3 No
- CCC (31 Responses) - 28 Yes / 3 No
- CRAL (3 Responses) - 2 Yes / 1 No
- CTC (14 Responses) - 8 Yes / 6 No
- ECC (18 Responses) - 17 Yes / 1 No
- FCIAC (15 Responses) - 13 Yes / 2 No
- Independent (4 Responses) - 4 Yes / 0 No
- NCCC (12 Responses) - 9 Yes / 3 No
- NVL (11 Responses) - 10 Yes / 1 No
- SCC (20 Responses) - 18 Yes / 2 No
- Shoreline (12 Responses) - 6 Yes / 6 No
- SWC (12 Responses) - 12 Yes / 0 No

In review of the submitted proposals and survey results, I recommend that the CIAC Board of Control establish a spring alternative season for any sport that does not complete at least 40% of its games in its regularly scheduled season. The 40% threshold is based on the criteria that the majority of our team sports require a 40% win rate to qualify for CIAC tournament play, which suggests it is a significant portion of the regular season. A slight shift in winter and spring season start and end dates will allow for

an alternative season to be scheduled with minimal impact to winter sports and no impact to spring schedules. Therefore, I recommend that the CIAC Board of Control consider the following motion:

- ***Motion: To establish an alternative season in the second semester for sports that do not complete at least 40% of their scheduled games in their regularly scheduled season, if supported by COVID metrics; and, that the season limitation dates for the beginning and end of the 2020-2021 winter and spring seasons be amended to accommodate the second semester alternative season.***

CIAC Regularly Scheduled 2020-2021 Winter Season

Conditioning – December 2- December 15

First date of winter contests – December 16

Last date to count toward CIAC State Tournament – March 1

CIAC State Tournament – March 7 – March 20

CIAC Potential Alternative 2020-2021 Winter Season (May require a 2 game reduction in basketball)

Conditioning – November 23 – December 5

First date of winter contests – December 7

Last date to count toward CIAC State Tournament – February 5

CIAC State Tournament – February 8 – February 21

CIAC 2021 Alternative Season

Conditioning—February 22 –February 26

First day of Full Pads (Football only)—February 27

Scrimmage Dates—March 6 and March 12 or 13

First date of special season contests – March 19

Last date of special season contests – April 17

CIAC 2021 Spring Sports Season

Conditioning – April 11 – April 22 (for student-athletes not playing a sport in the special season)

First date of spring contests – April 23

Last date to count toward CIAC State Tournament – June 8

CIAC State Tournament – June 14 – June 27

Football Fall Season

With the establishment of a second semester alternative season there would now be a scheduled CIAC competition season for football. As such, any activity outside of that season would be considered out-of-season. Given that the alternative season is still subject to supportive COVID metrics, it is recommended that member schools be allowed to provide low to moderate risk football activities through the established CIAC fall season (November 21). Through November 21 coaches would be permitted to have contact with their student-athletes to conduct school sponsored football activities. This may include any low to moderate risk football activity as provided by the member school or member school league. To accommodate the well-being and best interest of students, I recommend the board consider the following motion:

- ***Motion: To waive the out-of-season rule for football and allow coaches access to their student-athletes to conduct low to moderate risk school-sponsored activities during the CIAC fall competition season ending on November 21.***

Application of Out-of-Season Rule for School Coaches Coaching Independent Football League Teams

Currently, football is out-of-season. The exception granted by the CIAC Board of Control that allows coaches access to their student athletes during the fall season is limited to school sponsored activities. As such, CIAC's out-of-season coaching rules for non-school based teams and activities remains in effect. Therefore, a coach who is coaching a non-school affiliated football team this fall (out-of-season) is limited to 6 players from his/her own school who have CIAC eligibility remaining.

CIAC Position on Playing Full Contact 11v11 Football Against State Recommendations

While CIAC member schools may run club programs in any sport sponsored by the CIAC in accordance with CIAC bylaws, it is CIAC's recommendation that member schools not engage in full contact football during the fall season. This recommendation is made as a result of the recommendation of DPH to cancel or postpone 11v11 full contact football to a later time, the recommendation of Governor Lamont to consider playing later in the year, and the alignment of CIAC with those recommendations after presenting significant COVID mitigating strategies to DPH in an unsuccessful effort to gain support for a full contact fall football season.

To better advise our member schools the CIAC asked Shipman and Goodwin to issue a legal opinion on the following question: "What is the potential liability for a school and/or coach if they engage in high risk full contact football against the recommendation of DPH, the Governor's office, and CIAC?"

The following is the guidance CIAC received:

The premise of the question is that "full contact football" -- i.e., 11-on-11 football with tackling and line play -- has been deemed a "higher risk" activity and, therefore, not recommended by the Connecticut Department of Public Health (DPH), CIAC, and other authorities for reasons related to the COVID-19 Pandemic (collectively, the "Football Guidance"). See also "Guidance for Opening Up High School Athletics and Activities," National Federation of State High School Associations (NFHS) Sports Medicine Advisory Committee (SMAC) (Approved May 2020). The specific provisions of, and bases for, the

Football Guidance are beyond the scope of this memorandum. However, our analysis of potential school district and coach liability presumes that full contact football has been deemed by all relevant authorities to be a higher-risk activity for COVID-19 purposes and, therefore, not recommended to take place at this time.

In light of the Football Guidance, the potential for school district liability in the event a COVID-19 outbreak that can be traced to school-sponsored full contact football is high, and school districts should not count on waivers from participating students and/or their parents/guardians to protect them in the event of a lawsuit. Coaches may also be liable; however, if such coaches are acting in “the discharge of [their] duties or within the scope of employment or under the direction of the board of education” and their actions are not the result of “wanton, reckless or malicious behavior,” they likely would be indemnified by the school district in the event that liability attaches. The superintendent, however, as the person responsible for deciding to move forward with full contact football contrary to the Football Guidance, may be subject to personal liability without indemnification if the decision is found to be wanton or reckless.

CIAC Position on Independent League Participation

The CIAC recommends that member schools not enter teams into independent football leagues this fall. While individual student-athletes may participate in an independent football league this fall and maintain CIAC eligibility for any potential semester 2 alternative full contact season during the 2020-2021 school year, there are a number of liability concerns to consider should a member school promote or sanction such participation.

Notwithstanding the CIAC’s primary concern that student-athletes may be at a potential increased risk of injury due to the lack of heat acclimatization and full contact skill progression work normally conducted prior to the first full contact football game, the CIAC is also concerned about the liability a member school may incur if it promotes participation in such experiences.

To better advise our member schools, the CIAC requested the legal opinion of Shipman and Goodwin and asked the following question: “Now that the CIAC has canceled its fall football season, there are several independent football leagues popping up. How would you advise a CIAC member school in terms of liability if they issue a student football safety equipment (i.e. helmet, shoulder pads, etc.) and/or a uniform?”

The following is the guidance CIAC received:

A school district’s potential liability in this circumstance may be analyzed under (1) the pure negligence framework described in response to Question One and (2) a theory of negligent misrepresentation. **It is important first to review a school district’s potential liability for operating a full contact football program itself before reviewing a school district’s potential liability for loaning equipment that may be used for full contact football.** If the underlying activity carries a certain degree of risk with possible liability exposure, anyone involved in causing, enabling, authorizing, or sponsoring that activity -- particularly where the risks are foreseeable, as they are here -- could be liable for any foreseeable injury that results. To be sure, the risk of liability is diminished as the connection between the actor and the activity becomes more attenuated. However, we are concerned that there may be public policy reasons to hold a school district liable in this circumstance given that the school district is not running a football

program itself precisely because of the risks associated with it, and yet could be viewed as enabling or tacitly condoning full contact football by loaning equipment for student use outside the school setting.

With respect to the pure negligence theory, there are important distinctions between a circumstance in which a school district loans equipment and when it runs its own full contact football program. The significance of these distinctions is that the risk of liability for loaning equipment is lower -- perhaps even far lower -- than the risk of running a full contact football program. Specifically, it would be harder to establish the duty of care and causation elements of negligence where the school district merely loans equipment as opposed to running the program itself. Moreover, students who voluntarily participate in a private football league against official guidance and knowing that CIAC and school districts have canceled football for reasons related to the COVID-19 pandemic arguably could be more than fifty percent liable for any COVID-19 injuries they sustain as a result of their participation, which would constitute a complete defense to recovery under the theory of contributory negligence.

Importantly, however, school districts should be aware that liability for negligence if a district merely loans equipment is still possible. Liability is especially possible if the school district is loaning equipment that it knows will be used to perform activities that DPH has expressly advised against (e.g., equipment that is designed for use in connection with 11-on-11 football and/or football that includes tackling and line play). By contrast, where a school district loans equipment that could be used in manner that DPH generally has deemed to be acceptable (e.g., a helmet or uniform that could be used in connection with a 7-on-7 style of football in certain lower-risk circumstances), the likelihood of liability may be diminished.

Under a theory of negligent misrepresentation, a school district could be liable for harm caused by loaning equipment either for implicitly representing that football is safe by virtue of the loan, or by failing to disclose the potential risks associated with using the equipment to play football when it has a duty to make such a disclosure. Such duty to disclose may arise "from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act." See *Faillace v. Soderholm*, No. CV 950322549, 1997 WL 684900, at *7 (Conn. Super. Ct. Oct. 27, 1997). However, requiring students and parents to review and sign a Permission Slip expressly notifying them of the risks associated with playing football contrary to the Football Guidance, and requiring that they knowingly and voluntarily assume such risks, may help to mitigate (or possibly eliminate) liability in the event of a lawsuit based on a claim of negligent misrepresentation.

Classification of Basketball

The CIAC established its resocialization protocols and sport classifications in June 2020 based on the NFHS Return to Play guidance that was approved in May 2020. At the time of its publication, the CIAC aligned with each sport classification except basketball. With minimal understanding of how sport play would impact COVID spread, the CIAC erred on the side caution and moved basketball from the NFHS moderate classification to the CIAC high risk category. With a full summer AAU basketball season having been completed and fall basketball leagues underway, it is my recommendation that the CIAC Board of Control align its classification of basketball with the NFHS moderate risk category for that sport. Additionally, the recent sport guidance issued by DPH on September 25, 2020, lists basketball as a moderate risk sport.

The rationale for my recommendation is as follows:

1. The NFHS Return to Play guidance and CT DPH guidance identifies moderate risk sports as sports that involve close, sustained contact, but with protective equipment in place that may reduce the likelihood of respiratory particle transmission between participants OR intermittent close contact OR group sports OR sports that use equipment that can't be cleaned between participants.
 - a. Examples: Basketball, volleyball*, baseball*, softball*, soccer, water polo, gymnastics* (if equipment can't be sufficiently cleaned between competitors), ice hockey, field hockey, tennis*, swimming relays, pole vault*, high jump*, long jump*, girls lacrosse, crew with two or more rowers in shell, 7 on 7 football
*Could potentially be considered "Lower Risk" with appropriate cleaning of equipment and use of masks by participants
2. State DPH guidance consistently encourages the CIAC to continue to work with our existing Sports Medicine Committee, in consultation with NFHS, to determine whether CIAC's proposed mitigation strategies meet the standards set forth by NFHS. The DPH has established in our communications this fall that interscholastic sport decisions rest with the CIAC and that we should consider the position of NFHS when determining the risk level of a sport. Therefore, I recommend that basketball be placed in the moderate risk category in alignment with the NFHS.
3. A full summer AAU basketball schedule has been completed in CT which included game play with teams assembled with players from across the state. Additionally, AAU schedules included in-state and out-of-state competition. Fall AAU basketball schedules have begun and continue to be played indoors without masks in accordance with DECD sector rules for sports. Throughout the summer and fall basketball seasons there has been no data to demonstrate that playing indoor basketball without masks has significantly increased COVID transmission.

Given this rationale, I recommend that the CIAC Board of Control consider the following motion:

- ***Motion: To place basketball in the moderate risk category to align with NFHS classification guidance and based on the successful engagement of high school students in summer and fall basketball competition without any evidence of increased COVID transmission risk.***