



## MEMORANDUM

TO: Glenn M. Lungarini, Executive Director, CAS-CIAC

FROM: Jessica Richman Smith and Dori P. Antonetti

RE: Legal Advice Regarding the 2020-2021 Winter Sports Season

DATE: November 19, 2020

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We write in response to your request for legal advice on behalf of the Connecticut Association of Schools-Connecticut Interscholastic Athletic Conference (CIAC) regarding how a public school district should respond to a parent/student request for an exemption from, or modification to, a health and safety requirement related to COVID-19 imposed by a school district with respect to interscholastic athletics during the 2020-2021 winter sports season (the “Winter Season”). Typically, the requested exemption or modification would relate to a requirement that student athletes wear a face mask covering; however, the analysis below probably would apply equally to other exemption or modification requests. Our advice follows.

As a threshold matter, we note that as of November 19, 2020, certain health and safety requirements are mandatory for interscholastic sports. Specifically, we interpret the Connecticut Department of Public Health’s (DPH) “Updated Guidance on the Operation of Interscholastic, Youth and Other Amateur Sport Activities During the COVID-19 Pandemic” (revised November 9, 2020), *available at* <https://portal.ct.gov/DPH/Communications/Guidance/General-Guidance-for-Youth-and-Amateur-Sport-Activities-during-COVID-19-Pandemic> (the “November DPH Guidance”), as imposing mandatory rules for the safe conduct of youth sports, including interscholastic sports. For example, we interpret the November DPH Guidance to require “appropriate mitigation strategies” for indoor activities, such as mask-wearing at all times and six feet or more of distancing. The basis for this conclusion follows:

- Executive Order 9K, issued November 5, 2020, authorizes the Commissioner of Economic and Community Development “to establish, in Sector Rules or other rules issued by him, *mandatory rules for the safe conduct of youth sports.*” (Emphasis added).

- The Connecticut Department of Economic and Community Development (DECD) revised its Sector Rules for Sports, Sports Clubs & Complexes, Gyms, Fitness Centers and Pools to require that, as of November 9, 2020, “all interscholastic, club, recreational, and amateur sports ***must follow the most current guidance issued by the Department of Public Health . . . . If not recommended by the Department of Public Health, the activity is not allowed.***” (First emphasis added; second emphasis in original).
- DPH issued the November DPH Guidance on November 9, 2020. The November DPH Guidance provides a number of “recommendations” which, as noted above, we interpret to be mandatory rules. Such rules include, *by way of example only*:<sup>1</sup>
  - Specific actions for athletic club organizers, such as developing and implementing specific written protocols for strategies to be utilized during practices and contests and educating coaches and families about the COVID-19 risks associated with athletic activities and the need for strict compliance with protocols.
  - Specific actions depending on the risk categorization of the sport (*i.e.*, “Lower Risk Sports,” “Moderate Risk Sports,” and “Higher Risk Sports”).
  - Limiting indoor activities to the extent possible, with appropriate mitigation strategies in place (*e.g.*, face covering masks, six feet or more distancing).
  - Being aware of (and presumably following) any additional restrictions or requirements from a local health department or other local agencies.
  - Taking additional restrictive measures as communities move into and through the various alert levels regarding infection rates for COVID-19.

In light of the rules referenced above, we recommend that school districts inform parents/students requesting an exemption from the required mitigation strategies (such as mask-wearing) that such strategies are mandatory for all students participating in interscholastic sports. However, students who have, or assert that they have, a disability may be entitled to reasonable modifications under Section 504 of the Rehabilitation Act (Section 504) and/or Title II of the Americans with Disabilities Act (ADA). School districts should inform students/parents that if they wish to request such modifications under Section 504 and/or the ADA, they must follow a process whereby the school

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<sup>1</sup> For a complete list of DPH’s rules as of November 19, 2020, please review the November DPH Guidance at <https://portal.ct.gov/DPH/Communications/Guidance/General-Guidance-for-Youth-and-Amateur-Sport-Activities-during-COVID-19-Pandemic>.

district would determine (1) whether the student has a disability entitling him/her to “reasonable modifications,” and (2) if so, what “reasonable modifications” would be appropriate. This process must be highly individualized and case-specific, and may warrant consultation with legal counsel in connection with specific requests for disability-related modifications. School districts may already have a process in place to evaluate such requests in connection with their curricular program, which process probably could be adapted for extracurricular programming, including athletics.

Finally, given that the November DPH Guidance “recommends” (which, as discussed above, we interpret as a requirement) that athletic club organizers “educate coaches and families about the COVID-19 risks associated with athletic activities and the need for strict compliance with protocols,” we recommend that school districts require that parents of students and students participating in the Winter Season sign a Notice of Risks and Informed Consent acknowledging that they are aware of the risks associated with COVID-19, the risks of contracting COVID-19 through participation in athletics, and the risks (if any) of adhering to certain mitigation strategies, such as wearing a mask during active play. The Notice of Risks and Informed Consent should further require that parents/students agree to abide by any such health and safety protocols that the school district may require. School districts may decide as a business judgment whether they wish to include a waiver of claims against the school district related to the aforementioned risks. We attach as Appendix A a sample Notice of Risks, Informed Consent [, and Waiver] which school districts may adapt for their purposes. Please note that this document may need to be updated if CDC, DPH, and/or other guidance evolves between now the start of the Winter Season.

\* \* \*

We hope this information is helpful. Please feel free to contact us with additional questions. Thank you.

**APPENDIX A**  
**LAST UPDATED: JANUARY 12, 2021**

**IMPORTANT NOTES TO SCHOOL DISTRICTS:**

- *This document may need to be updated if CDC, DPH, and/or other guidance evolves between now and the start of the 2020-2021 winter sports season.*
- *School districts may decide as a business judgment whether they wish to include a waiver of claims. Optional waiver language is included below in bolded, italicized text and gray shading.*
- *DPH recommends that families receive educational materials reflecting current American Academy of Pediatrics (AAP) risk messaging regarding cardiovascular risks associated with COVID-19 infection. While this Notice includes some information regarding these risks, school districts may wish to augment the educational materials provided to families regarding such risks. Such additional educational materials could be included as an attachment to this Notice.*

**NOTICE OF RISKS, INFORMED CONSENT[, AND WAIVER]  
REGARDING INTERSCHOLASTIC SPORTS DURING COVID-19**

Given the current pandemic health emergency related to the highly contagious novel coronavirus (“COVID-19”), and following the recommendations of the Connecticut Department of Public Health (DPH) for the continued operation of sports activities for interscholastic youth sports, the **[DISTRICT]** Board of Education (the “Board”) and the **[DISTRICT]** Public Schools (together, the “District”) invites students to participate in District-sponsored interscholastic sports during the 2020-2021 winter season under certain conditions and consistent with all applicable rules, regulations, federal and state orders and guidance, and guidance from public health officials related to COVID-19. This Notice of Risks, Informed Consent, **[and Waiver]** (the “Notice”) relates to students’ optional and voluntary participation in the 2020-2021 season of **[SPORT]** (“Winter Sports”), which participation is expected to begin on or around **[DATE]** and continue until on or around **[DATE]**. The parents or legal guardians (“Parents”) of participating students (“Student” or “Students”) and the Student must sign this Notice and return it to **[CONTACT/OFFICE]** by **[DATE]**.

**INFORMATION ABOUT COVID-19**

COVID-19 is an illness caused by a virus that can spread from person to person, primarily through respiratory droplets. Recent data suggest that there can be transmission of COVID-19 through respiratory droplets of those with mild (or no) symptoms or those who do not feel ill. COVID-19 symptoms can range from mild (or no) symptoms to severe illness. Symptoms of COVID-19 may include, among other symptoms, fever or chills, cough, shortness of breath or difficulty breathing, fatigue, headache, congestion or runny nose, muscle or body aches, sore throat, new loss of smell or taste, nausea or vomiting, and diarrhea. The estimated incubation period is between 2 and 14 days with a median of 4 to 5 days. It is important to note that some people become infected and do not develop any symptoms or feel unwell.

COVID-19 is a new disease and there are limited data and information about the impact of many underlying medical conditions on the risk for severe illness from COVID-19. Severe illness from COVID-19 is defined as hospitalization, admission to the intensive care unit (ICU), intubation or mechanical ventilation, or death.

Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Additionally, adults of any age with the following conditions **are at increased risk** of severe illness from the virus that causes COVID-19: cancer; chronic kidney disease; COPD (chronic obstructive pulmonary disease); Down Syndrome; heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index [BMI] of 30 kg/m<sup>2</sup> or higher but < 40 kg/m<sup>2</sup>); severe obesity (BMI ≥ 40 kg/m<sup>2</sup>); pregnancy; sickle cell disease; smoking; and type 2 diabetes mellitus. Adults of any age with other medical conditions not listed here **might be at increased risk** for severe illness from the virus that causes COVID-19. As more data become available, additional risk factors for severe COVID-19 may be identified.

While fewer children have been sick with COVID-19 compared to adults, children can be infected with the virus that causes COVID-19, can get sick from COVID-19, and can spread the virus that causes COVID-19 to others. Children, like adults, who have COVID-19 but have no symptoms can still spread the virus to others. Most children with COVID-19 have mild symptoms or have no symptoms at all. However, some children can get severely ill from COVID-19 and might require hospitalization, intensive care, or a ventilator to help them breathe. In rare cases, they might die. Babies under one year old and children with certain underlying medical conditions might be at increased risk for severe illness from COVID-19. Children with the following conditions, among others not listed here, might be at increased risk for severe illness: asthma or chronic lung disease; diabetes; genetic, neurologic, or metabolic conditions; sickle cell disease; heart disease since birth; immunosuppression (weakened immune system due to certain medical conditions or being on medications that weaken the immune system); medical complexity (children with multiple chronic conditions that affect many parts of the body, or are dependent on technology and other significant supports for daily life); and obesity. The Centers for Disease Control and Prevention (CDC) and partners are investigating a rare but serious medical condition associated with COVID-19 in children called Multisystem Inflammatory Syndrome in Children (MIS-C). It is not yet known what causes MIS-C and who is at increased risk for developing it.

While there are now authorized and recommended vaccines to prevent COVID-19 in the United States, there is currently a limited supply of these vaccines and many people will not have been vaccinated by the time Winter Sports begins. In addition, multiple variants of the virus that causes COVID-19 have been documented in the United States and globally during this pandemic. **Therefore, the best way to prevent illness is to avoid being exposed to the virus that causes COVID-19.** The CDC also advises, among other precautionary measures, that individuals should cover their mouth and nose with a mask when around others; stay at least six feet away from others who do not live with them; avoid crowds; avoid indoor spaces that do not offer fresh air from the outdoors as much as possible, and if indoors, bring in fresh air by opening windows and doors, if possible; wash their hands often with soap and water for at least 20 seconds or use a hand sanitizer that contains at least 60% alcohol if soap and water are not readily available; cover coughs and sneezes; clean and disinfect frequently touched surfaces daily; monitor their health daily; and stay home and isolate from others when sick.

**Additional information regarding COVID-19 is available on the following websites or upon request from the District:**

- CDC website at <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
- DPH website at <https://portal.ct.gov/Coronavirus>
- *[District policies located at WEBSITE]*

Although the District has implemented certain preventative measures consistent with applicable rules, regulations, federal and state orders and guidance, and guidance from public health officials related to COVID-19, the District cannot ensure that Students participating in Winter Sports and/or their families or others in the Student's household will not become infected with COVID-19. Moreover, the District cannot protect against exposure to or infection by COVID-19 that occurs due to the actions, omissions, and/or negligence of students or others, including District staff members.

#### **INFORMATION ABOUT THE OPERATION OF SPORTS ACTIVITIES DURING THE COVID-19 PANDEMIC**

Due to the rapid increases in community cases in the weeks leading up to the holidays, DPH and the Department of Economic and Community Development (DECD) recommended a "pause" on team sports activities effective November 23, 2020 through January 19, 2021. As of January 8, 2021, DPH continues to recommend a cautious approach to any restart of athletic activities. In a January 8, 2021 letter to the Connecticut Association of Schools - Connecticut Interscholastic Athletic Association (the "January Guidance"), DPH notes that this "recommendation is based on what we know (that community transmission rates have been high in our state for several months), what we anticipate (that the combination of increased mobility and holiday gatherings will lead to another 'bump' in cases in the first few weeks of January), and unknowns that we think could make things worse (introduction of new virus variants that are more transmissible and may lead to many more cases, hospitalizations, and deaths)."

#### ***Operation of Sports***

In "Updated Guidance for the Operation of Interscholastic, Youth and other Amateur Sport Activities during the Covid-19 Pandemic" (revised November 9, 2020) (the "November Guidance"), DPH noted that, at that time, there had been an increase in the number of infections and shift in the age distribution of cases to younger individuals occurring across Connecticut and advised that by their nature of play certain sports are more likely to promote exposure to the virus that causes COVID-19 through respiratory droplets. DPH advised sports organizations to pay specific attention to these risks when making a determination whether or not to engage in activities in the coming months, to inform players and parents of the risks of participation, and to be aware of any additional restrictions or requirements from local health departments or other local agencies.

In the November Guidance, DPH agreed that there are real and significant benefits of athletic activity for physical and mental health and well-being for both children and

adults. However, DPH also agreed with the National Federation of State High School Associations (NFHS) and other governing bodies that not all sports are equal in their risk for their potential to spread infectious respiratory droplets, and therefore certain sports and activities have more potential to be conducive to the spread of COVID-19 infections in our communities. In the January Guidance, DPH advises specifically that for **moderate and lower risk winter sports (basketball, ice hockey, gymnastics, indoor track)**, practices should begin no earlier than January 19, 2021, including any team activities that involve group aerobic conditioning, sport-specific non-contact skill development drills, team practices, and/or intra-squad scrimmages. DPH further advises that interscholastic **in-state competitions** should begin no earlier than February 1, 2021 assuming community metrics continue an appropriate downward trend and athletic activities are not impacting in-person learning. For **higher risk winter sports (competitive cheer, competitive dance, wrestling)**, DPH does not recommend any activities beyond small group conditioning and non-contact skill building for the duration of the winter season. In addition, DPH recommends against the operation of traditional large, multi-school indoor track meets for the winter season, as well as any athletic activities involving out-of-state facilities, teams, or athletes at least through the months of January and February 2021.

### *Mitigation Strategies*

In the January Guidance, DPH advises that all participants, coaches, and officials will need to utilize a mask that completely covers the nose and mouth, and that is worn directly on the face, at all times when participating in organized team sport activities, including during active play. DPH notes that the latest guidance from the American Academy of Pediatrics (AAP) recommends that youth athletes wear cloth face coverings when they are on the sidelines, in the locker room, and traveling as well as during group training and active competition (except in pools or while using certain gymnastics apparatus). The January Guidance also advises that individuals required to quarantine due to close contact with a known COVID-19 case must not gather with other athletes for engagement in team sports prior to completion of a full 14-day quarantine requirement, notwithstanding any guidance to the contrary regarding the shortening of required quarantine periods.

### *Return-to-Play after COVID-19 Infection*

In the January Guidance, DPH notes that there is the potential, and documented cases, of severe disease complications in people of all ages. DPH notes further that long-term health effects and impacts on organ systems function resulting from even mild or asymptomatic COVID-19 disease is still unknown, although there have been some studies implicating blood clotting and cardiac effects as potentially under-recognized longer-term sequelae. As such, DPH recommends that health screening and clearance requirements for allowing athletes to begin a phased return to activities after COVID-19 infection should incorporate the AAP's guidance for return-to-play and include specific cardiac evaluations. In addition, DPH recommends that parents and athletes be informed of the cardiovascular risks associated with COVID-19 infection and provide informed consent based on knowledge of such risks. For additional information about the cardiovascular and other risks associated with COVID-19 infection, and current guidance from the AAP regarding returning to sports, please carefully review the AAP's "COVID-19 Interim Guidance: Return to Sports," available at <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-interim-guidance-return-to-sports/>.

For DPH's guidance regarding, among other relevant matters, (1) risks associated with various sports and sports activities (including risk categorizations with associated sports; recommendations for the operation of various amateur sports activities; and risk categorizations for various athletic activities); (2) recommended COVID-19 mitigation strategies; and (3) return-to-play after COVID-19 infection, please carefully review the November Guidance, available at <https://portal.ct.gov/DPH/Communications/Guidance/General-Guidance-for-Youth-and-Amateur-Sport-Activities-during-COVID-19-Pandemic>, and the January Guidance, available at [REDACTED].

### INFORMED CONSENT ~~[AND WAIVER]~~

We, \_\_\_\_\_ [PARENTS AND STUDENT NAMES], understand that the Student has the opportunity to participate in Winter Sports. We understand that Winter Sports will take place *[both on and off]* District grounds and will be provided consistent with current applicable health and safety guidance from federal, state, and local authorities. We understand that the choice to have the Student participate in Winter Sports is voluntary. Before the Student will be permitted to participate in Winter Sports, the District requires that we read the information in this Notice (including the information contained in the websites cited herein) and sign below to ensure that we are informed of and understand the risks related to COVID-19 associated with participating in Winter Sports.

In signing below, the Parents attest that we are the parent/guardian of the above-named Student, and the Parents and Student attest that we have read the Notice and the websites cited herein and understand the risks related to COVID-19 associated with participating in Winter Sports. We further understand that there are cardiovascular and other health and safety risks associated with returning to athletic activities after COVID-19 infection. We also acknowledge that the health and safety risks posed by COVID-19 cannot be completely eliminated, despite the implementation of reasonable and age-appropriate precautions and protocols. We further understand that because of the COVID-19 pandemic and the risk of transmission inherent in [SPORT], DPH and NFHS have categorized [SPORT] as a "[RISK CATEGORY]" sport. We further understand that there may be risks to the Student associated with adhering to certain mitigation strategies recommended and/or required by DPH and required by the District, such as wearing a face covering mask that completely covers the nose and mouth, including during active play. Finally, given the unknown nature of COVID-19, we understand that it is not possible to list each and every specific risk associated with COVID-19 and that neither the District nor public health officials can guarantee that any student participating in Winter Sports or other in-person activities will not come into contact with someone infected by COVID-19 and/or contract such illness.

By opting to allow the Student to participate in Winter Sports, we agree that the Parents and the Student will abide by any such health and safety protocols that the District may require, such as requiring students to wear face covering masks that completely cover the nose and mouth (including during active play) and adhering to any quarantine periods required by the District. We understand that promoting public health is a shared responsibility and that every member of the District community must do his/her part to minimize risks.

In consideration for being allowed to participate in Winter Sports, we fully ASSUME ALL RISKS, inherent and otherwise, whether or not described above, in connection with the



Student's participation in Winter Sports, **[OPTIONAL WAIVER LANGUAGE:** and waive the right to initiate and/or pursue in any manner any and all lawsuits and any other claims in any forum against the Board, its board members, officers, employees, agents, contractors, and/or the District, and assigns (the "Released Parties") for any injury or harm connected to the Student's participation in Winter Sports. These agreements of assumption of risks and waiver do **NOT** apply if (1) the liability, damage, loss or injury is **CAUSED SOLELY BY THE NEGLIGENCE** of the Released Parties and do not include the negligence or any other act or omission by any other person or entity (such as the Student, the Parents, other student athletes, other third parties or independent vendors/contractors); or (2) the liability, damage, loss or injury is **CAUSED BY THE RECKLESS, WANTON or INTENTIONAL MISCONDUCT** of a Released Party.] These agreements of assumption of risks [and waiver] will be construed in accordance with Connecticut law.

**WE HAVE READ AND UNDERSTAND THE NOTICE ABOVE (INCLUDING THE INFORMATION ABOUT COVID-19 AND THE OPERATION OF SPORTS ACTIVITIES DURING THE COVID-19 PANDEMIC) AND CONSENT TO THE STUDENT PARTICIPATING IN WINTER SPORTS DURING THE 2020-2021 WINTER SEASON.**

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Parent/Legal Guardian signature

Date

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Parent/Legal Guardian signature

Date

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Student signature

Date