



MEMORANDUM

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

FROM: Dori P. Antonetti and Jessica Richman Smith

RE: Capacity for Sporting Events and Related Public Health Considerations for the Winter Sports Season

DATE: September 28, 2020
Revised February 2, 2021

We write in response to your request for legal advice on behalf of the Connecticut Association of Schools-Connecticut Interscholastic Athletic Conference (“CIAC”) regarding capacity guidelines and/or rules for sporting events during the COVID-19 pandemic health emergency (the “COVID-19 Pandemic”). Specifically, you recently requested that we update the legal advice we previously provided regarding the following questions:

“How do schools apply the capacity guidelines issued by Governor Lamont to their sporting events? Are schools limited to 100 people, including athletes, at outdoor venues? If there is a stadium, is that capacity 25%? What would the indoor capacity be for a pool or gymnasium?”

We have updated our September 28, 2020 memorandum in light of the following developments:

- Connecticut’s Phase 2.1 rules;
- Governor Ned Lamont’s Executive Orders 9K, 9L, 9M, and 9N;
- revisions to the applicable Sector Rules issued by the Connecticut Department of Economic and Community Development (DECD); and
- Updated Guidance for the Operation of Interscholastic, Youth and Other Amateur Sport Activities During the COVID-19 Pandemic (revised November 9, 2020 and last updated January 19, 2021) issued by the Connecticut Department of Public Health (DPH).

Below, we provide a short answer to the questions above, followed by a longer answer with a comprehensive legal analysis and additional detail.

SHORT ANSWER:

Relevant Background

Previously, there were no specific capacity *rules* that applied to public school-sponsored sporting events held on school grounds or at school facilities.¹ The rules for businesses and social and recreational gatherings included in certain of Governor Ned Lamont’s Executive Orders and established pursuant to such orders by DECD (collectively, the “Gathering Restrictions”) generally did not apply to school districts. The rules that applied (and still apply) directly to public school districts are set forth in the Connecticut State Department of Education’s (CSDE) reopening guidance for school districts entitled, Adapt, Advance, Achieve: Connecticut’s Plan to Learn and Grow Together (Last Updated: September 4, 2020) (the “School Reopening Guidance”). To be sure, the School Reopening Guidance includes multiple requirements related to maintaining appropriate social distancing; however, it does not include specific limitations on capacity within public school facilities or at school-sponsored events.

On November 20, 2020, Governor Lamont issued Executive Order 9M, recognizing the reported transmission of COVID-19 among both children and adults from sports activities and DPH’s recommended restrictions on sports. Executive Order 9M also authorized the Commissioner of Economic and Community Development, in consultation with the Commissioner of Public Health, “to establish, in Sector Rules or other rules issued by him, *mandatory rules* for the safe conduct of sports.” (Emphasis added). In response, DECD placed all “Team” sporting activities except for approved collegiate and professional sports on pause from November 23, 2020 through January 19, 2021. Effective January 19, 2021, DECD lifted its suspension of Team sporting activities and issued revised Sector Rules for Sports, Sports Clubs & Complexes, Gyms, Fitness Centers & Pools (“Sector Rules for Sports”). The most recently updated Sector Rules for Sports provide, in relevant part: “*In addition to the DECD Sector Rules guidance below, all sports teams and leagues must follow full CT DPH Sports Guidance.*” (Emphasis added).

In January 2021, DPH issued Updated Guidance for the Operation of Interscholastic, Youth, and Other Amateur Sports Activities During the COVID-19 Pandemic (the “January DPH Guidance”) for the operation of sporting activities during the winter sports season (January 19 through March 15, 2021) (the “Winter Season”). The January DPH Guidance addresses the risks associated with various sporting activities and offers recommended risk mitigation strategies, including recommendations for the operation of lower risk, moderate risk, and higher risk sports. It also addresses, among other things, education and communication strategies for athletic club organizers; mask-

¹ Our response to this question addresses only public school districts. We have not included independent schools or the CIAC itself in our analysis.

wearing requirements; contact tracing and quarantine requirements; and return-to-play after COVID-19 infection.

Notably, the January DPH Guidance does not specifically address capacity limits. However, the January DPH Guidance does state: “*In all cases, indoor activities should be restricted to the extent possible, with appropriate mitigation strategies (face covering masks, [six] feet or more distancing when possible, etc.) in place for all indoor activities and those outdoor activities where close contact is expected.*” (Emphasis added). The January DPH Guidance also emphasizes that “[s]ports organizations should be aware of any *additional* restrictions or requirements from their local health department or other local agencies” and athletic club organizers and facility operators should “[c]heck with municipalities and private facility operators regarding any *additional* restrictions for the use of their indoor or outdoor spaces.” (Emphasis added).

Conclusions and Recommendations

With respect to all sports,² school districts must adhere to the following: (1) the Sector Rules for Sports; (2) the January DPH Guidance; (3) the School Reopening Guidance and the social distancing and other health-related requirements therein, including requirements pertaining to physical education and physical activity; and (4) any additional local public health restrictions and requirements, provided such local restrictions and requirements are no *less* restrictive than those set forth in the Sector Rules for Sports, the January DPH Guidance, and the School Reopening Guidance.

In conducting *interscholastic* sporting events, school districts also should be mindful of the CIAC 2020-2021 Winter Sports Plan (“Winter Sports Plan”), which contains extensive guidance and requirements for the Winter Season. Importantly, the Winter Sports Plan directs principals of schools located in towns with 15 or more cases per 100,000 residents (as indicated at <https://casci.ac/6211>) to notify their league commissioner and the CIAC whether they choose to continue with game competition. In addition, although school districts have the authority to make decisions regarding spectator attendance, as aligned with relevant DECD and DPH rules, the CIAC’s position is that “*fans should not be allowed at interscholastic contests or practices.*” (Emphasis added). Notwithstanding this recommendation, the CIAC notes, in relevant part:

² “Outdoor Recreation Activities” (as defined by DECD at <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Sector-Rules-and-Certification-for-Reopen>) that are not sporting events, road races, or interscholastic contests or practices are subject, in addition to the rules set forth above, to the DECD’s General Business Rules, *available at* https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery-Phase-2-1/CTReopens21_GenBus12232020.pdf. Any discussion of Outdoor Recreation Activities and the rules relevant to their operation is outside the scope of this memorandum. School districts seeking advice regarding the rules applicable to such activities are advised to consult with their legal counsel.

We understand the complexities of individual districts who use public fields and affirm that the ultimate decision rests with the district; however, the CIAC believes that prohibiting fan/spectator attendance aligns best with the goals of education-based athletics. Any allowance for spectators/fans should align with DECD sector rules.

See id.

In light of all relevant considerations, we recommend the specific capacity rules and guidelines *for school-sponsored sporting events held on school grounds or at school facilities*. In addition to these recommendations, we further recommend that school districts consult with their local public health officials and private facility operators (if any)³ when planning for any sporting event to ensure such planning is consistent with any more restrictive public health guidelines in place at that time.

- **Sporting events:**

- In all cases, indoor activities should be restricted to the extent possible, with appropriate mitigation strategies in place for all indoor activities and those outdoor activities where close contact is expected.
- Limit attendance to only the necessary number of adults to hold practices and competitions, including no more than one parent/guardian per youth athlete and no more than 50% capacity, with appropriate social distancing such that attendees remain six feet apart, visual social distancing markers and periodic announcements encourage individuals to remain six feet apart, attendees wear cloth face coverings that completely cover the nose and mouth, and cleaning and disinfecting of seating areas is performed before and after use.
- Use benches and bleachers only if six feet of distance can be maintained and if thoroughly cleaned before and after every use.
- Follow the January DPH Guidance regarding the operation of the sporting event for the particular sport involved. Such guidance will vary depending on the risk categorization of the sport and the event type.
- If local (*e.g.*, town- or municipal-level) public health guidance requires *additional* restrictive measures due to shifting public health conditions, follow all such requirements in place at the time of the event.

³ If a school-sponsored sporting event is held in a location other than on school grounds or at school facilities (*e.g.*, at a private sports complex or a private pool), the relevant Gathering Restrictions and the Sector Rules for Sports, including the capacity limits, social distancing requirements, and other significant and extensive requirements outlined therein, would be mandatory for, and enforceable against, the facility that hosts the sporting event.

- **Pools:**
 - Follow all rules for sporting events, immediately above.
 - Limit swimmers to four per lane during practice and pre-match warm up periods and
 - Establish cohorts consisting of up to four swimmers that will use the same lane at the same time and that are consistent throughout the entire season.
 - Ensure swimmers are engaged in continuous swimming while using the same lane.
 - Space swimmers to the maximum extent possible during active swimming.

- **Road races:**
 - In-person road races should be postponed until Spring 2021, subject to COVID-19 metrics.

- **Interscholastic contests and practices:**
 - Notwithstanding any guidance above to the contrary, consistent with the CIAC’s recommendation, “fans should not be allowed at interscholastic contests or practices.” While not required by the other applicable rules and guidelines described herein, we believe this approach is appropriate in light of the public and individual health risks associated with the COVID-19 Pandemic.
 - For school districts that wish to allow fans at interscholastic contests and/or practices, we recommend that any such allowance align with the rules set forth above.

We note that the capacity rules and guidelines related to the COVID-19 Pandemic continue to change and evolve. We further note that the January DPH guidance applies to the Winter Season but may be revised prior to the end of the season. *Finally, the advice and recommendations herein are based on the rules and guidelines in effect as of the date of this memorandum and apply to the Winter Season only.*

LONG ANSWER:

I. Legal Framework.

Through a series of Executive Orders, including, among others, Executive Orders 7D, 7N, 7PP, 7TT, 7XX, and 7ZZ, Governor Lamont placed restrictions on social, recreational, and religious gatherings in light of the risks associated with gathering during the COVID-19 Pandemic. In addition, Governor Lamont delegated authority to

DECD to establish rules for each of various business sectors, which rules relate to slowing the spread of COVID-19 and are legally binding and enforceable. *See, e.g.*, Executive Orders 7PP, 7ZZ. Collectively, such restrictions and rules are referenced herein as the “Gathering Restrictions.”⁴

In September 2020, the DPH issued *guidance* for the continued operation of sporting activities for private, municipal, and interscholastic youth and adult sports leagues (the “September DPH Guidance”). *See* DPH, General Guidance for the Operation of Interscholastic, Youth and other Amateur Sport Activities during the COVID-19 Pandemic Fall/Winter 2020 (September 25, 2020). As noted in our September 28, 2020 memorandum, the recommendations set forth in the September DPH Guidance were neither rules nor requirements. We therefore advised that the September DPH Guidance, while not mandatory for school districts, could be viewed as establishing the standard of care for school-sponsored, interscholastic, and other sporting activities. As such, we recommended that school districts follow the recommendations in the September DPH Guidance to mitigate their risk of liability, even where such recommendations were more conservative than other relevant capacity rules or guidelines.

On October 8, 2020, Governor Lamont updated and eased the Gathering Restrictions as part of Phase 3 of Connecticut’s reopening plan. Most recently, however, Governor Lamont required that more restrictive measures again be imposed as Connecticut transitioned to Phase 2.1 of reopening. Specifically, on November 5, 2020, Governor Lamont issued Executive Order 9K, which acknowledged the increased prevalence of COVID-19 throughout Connecticut and returned to more restrictive statewide protective measures.

Executive Order 9K also authorized 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” and directed the Commissioner to consult with the Commissioner of Public Health in establishing such rules. (Emphasis added). Pursuant to this order, DECD updated its Sector Rules for Sports on November 9, 2020 to provide that “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 [DPH], the activity is not allowed.**” At the same time, the DPH issued Updated Guidance on the Operation of Interscholastic, Youth and Other Amateur Sports Activities During the COVID-19 Pandemic (the “November DPH Guidance”). Significantly, by contrast to the September DPH Guidance, the November DPH Guidance constituted *mandatory requirements* with which interscholastic, club, recreational, and amateur sports had to comply.

⁴ DECD’s Sector Rules for Sports, Sports Clubs & Complexes, Gyms, Fitness Centers & Pools will be discussed separately.

Thereafter, on November 20, 2020, Governor Lamont issued Executive Order 9M, recognizing the reported transmission among both children and adults from sports activities and DPH’s recommended restrictions on sports. Executive Order 9M also authorized the Commissioner of Economic and Community Development, in consultation with the Commissioner of Public Health, “to establish, in Sector Rules or other rules issued by him, *mandatory rules* for the safe conduct of sports.” (Emphasis added). Executive Order 9M repealed and superseded Section 4 of Executive Order 9K, which had authorized the Commissioner to enact mandatory rules for the safe conduct of *youth* sports only.

With the exception of the graduation ceremony rules set forth in Section 2 of Executive Order 7XX, prior to the issuance of Executive Orders 9K and 9M, the Gathering Restrictions did not apply to school districts. *See, e.g.*, Executive Order 7N (noting that the restrictions on social and recreational gatherings “[do] not apply to government operations . . . or other activities that are not social or recreational gatherings”); Executive Order 7PP (addressing Phase 1 Business Reopening to provide for the safe resumption of limited social, recreational, athletic, and economic activity pursuant to Sector Rules for various *business sectors* and providing for the Enforcement of Sector Rules Governing the Reopening of *Businesses*) (emphasis added); Governor Ned Lamont, *Frequently Asked Questions on the State of Connecticut’s Actions Related to COVID-19* (updated June 8, 2020) (stating that the sector-specific rules developed by Governor Lamont and DECD contain “guidance on reopening for *businesses* that choose to do so beginning May 20, 2020”) (emphasis added); Sector Rules for June 17th Reopen (stating that “[i]ndividual businesses within sectors allowed to open . . . must comply with the rules we lay out to safeguard their employees and customers”); Executive Order 7NNN (granting authority to DECD to issue or amend size limits for private gatherings, regardless of whether such gatherings are organized by a business). Indeed, Governor Lamont has issued Executive Orders specifically directed to school districts (including, without limitation, Section 2 of Executive Order 7XX) separate and apart from the rules concerning businesses, and the process for reopening schools in Connecticut has been the subject of an entirely separate process which culminated in the issuance of the School Reopening Guidance.

As noted above, Executive Order 9M authorized the Commissioner of Economic and Community Development, in consultation with the Commissioner of Public Health, to issue mandatory rules for all sports. DECD issued rules regarding Team Sports on Pause, placing all “Team” sporting activities except for approved collegiate and professional sports on pause from November 23, 2020 through January 19, 2021, subject to certain exceptions (the “Pause”). Effective January 19, 2021, DECD lifted the Pause and again revised its Sector Rules for Sports. The most recently updated DECD Sector Rules for Sports state: “*In addition to the DECD Sector Rules guidance below, all sports teams and leagues must follow full CT DPH Sports Guidance.*” (Emphasis added).

In January 2021, DPH revised its Updated Guidance for the Operation of Interscholastic, Youth, and Other Amateur Sports Activities During the COVID-19 Pandemic (the “January DPH Guidance”) for the operation of sporting activities during the Winter Season. The January DPH Guidance describes the risks associated with various sporting activities and offers recommended risk mitigation strategies, including recommendations for the operation of various sporting activities for different sports based on the designated level of risk associated with such sports (*i.e.*, “lower risk sports,” “moderate risk sports,” and “higher risk sports”). In addition, the January DPH Guidance addresses, among other things, education and communication strategies for athletic club organizers; mask-wearing requirements; contact tracing and quarantine requirements; and return-to-play after COVID-19 infection.

Notably, the January DPH Guidance does not specifically address capacity limits. However, the January DPH Guidance does state: “*In all cases, indoor activities should be restricted to the extent possible, with appropriate mitigation strategies (face covering masks, six feet or more distancing when possible, etc.) in place for all indoor activities and those outdoor activities where close contact is expected.*” (Emphasis added). The January DPH Guidance also emphasizes that “[s]ports organizations should be aware of any additional restrictions or requirements from their local health department or other local agencies” and athletic club organizers and facility operators should “[c]heck with municipalities and private facility operators regarding any additional restrictions for the use of their indoor or outdoor spaces.”

In light of Executive Order 9M, with respect to all sports,⁵ school districts must adhere to the updated Sector Rules for Sports; the January DPH Guidance; the School Reopening Guidance; and any additional local public health restrictions and requirements, provided such local restrictions and requirements are no *less* restrictive than those set forth in the Sector Rules for Sports, the January DPH Guidance, and the School Reopening Guidance. Finally, with respect to interscholastic athletics and activities, the School Reopening Guidance advises that school districts consult guidance provided by the CIAC. Therefore, in conducting interscholastic sports, school districts should be cognizant of the CIAC’s recommendations regarding interscholastic contests and practices.

The applicable rules and guidance are summarized, in relevant part, below. **School districts also should consult the relevant source documents for rules and requirements unrelated to capacity limits and spectator attendance, as the full extent of such rules is beyond the scope of this memorandum.**

II. Applicable Rules.

As described above, school districts offering interscholastic or other sports must follow the Sector Rules for Sports, the January DPH Guidance, and the School

⁵ Outdoor Recreation Activities are also subject to DECD’s General Business Rules. *See* note 2.

Reopening Guidance as they may be amended during the COVID-19 Pandemic, with respect to capacity and any other rules and recommendations established therein. Although the January DPH Guidance does not contain specific *capacity* rules for school-sponsored sporting events held on school grounds or at school facilities, it does require certain sporting activities to meet public health protocols for indoor activities and outdoor activities where close contact is expected. We further recommend that school districts consult with their local public health officials when planning for any sporting event to ensure such planning is consistent with any more restrictive public health guidelines in place at that time, as required by the January DPH Guidance and the School Reopening Guidance.

The specific capacity rules and guidelines we recommend for school-sponsored sporting events are set forth in the Short Answer above. The basis for these recommendations follows. **Please note that the rules set forth below, which are current as of January 27, 2021, are available on the various websites cited herein. For an updated list of these rules, please consult the cited websites directly.**

Sector Rules for Sports

See https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery-Phase-2-1/Sports_FitnessCenters- C12_V101192021.pdf.

- Capacity limit of 50%.
- Only the necessary number of adults to hold practices and competitions shall attend, including no more than one parent/guardian per youth athlete, so long as the venue allows for six feet of social distancing of spectators, who must maintain social distancing and wear face coverings throughout the activity. Adult club/recreational sports, with participants who are aged 21 years and older, shall not have spectators.
- For pools, observers are discouraged. If parent/guardians are necessary, only one per swimmer is allowed, they must wear a mask, and remain at least six feet apart.
- Swim teams can have up to four swimmers per lane during practice and pre-match warm up periods, provided:
 - Cohorts consisting of up to four swimmers that will use the same lane at the same time are constant throughout the entire season.
 - Swimmers are engaged in continuous swimming while using the same lane (*e.g.* the group isn't gathered at one end of the lane without masks during break periods or to receive coaching).

- Swimmers remain maximally spaced to the extent possible during active swimming (*e.g.* pair swimmers of similar skill level/speed to the extent possible).
- Dugouts, benches, and bleachers are allowed to open only if they can be thoroughly cleaned before and after every use, and six feet of distance can be maintained.
- Parent seating areas are allowed to open only if they can be thoroughly cleaned and disinfected before and after every use, and six feet of distance can be maintained.
- Install visual social distancing markers to encourage customers to remain 6 feet apart (*e.g.*, the entrance to the facility, locker rooms, class spaces, fan areas).
- Spectator compliance with social distancing should be encouraged through periodic announcements or audio recordings.
- Spectators are required to bring and wear a facemask or cloth face covering that completely covers the nose and mouth.
- In-person road races should be postponed until Spring 2021, subject to COVID-19 metrics.⁶

January DPH Guidance

See https://portal.ct.gov/-/media/DPH/Communications/Covid19/DPH-Youth-and-Amateur-Sports-COVID19_UPDATED_Jan_2021_Final_v23.pdf.

The January DPH Guidance provides, in relevant part, the following guidance regarding interscholastic sporting activities:

The ability to operationalize and ensure compliance with appropriate mitigation strategies is an important factor that should be considered and applied to decision-making for various sports. DPH continues to recommend that youth sports organizations thoughtfully consider and discuss with participant families any changes to the way sports have traditionally operated across different age groups prior to instituting those changes for their athletes. After those discussions have taken place, we advise that if organizations or participant families feel that the implementation of, and consistent compliance with, the COVID-

⁶ This rule is not included in the Sector Rules for Sports but does appear in DECD's Updated Sports Guidance Summary, available at <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Updated-Sports-Guidance-Summary>.

19 protective measures presented in this guidance document are impractical, unadvisable, or undesirable for any reason, then participation in those activities by individual participants, or the organization as a whole, continue to be postponed until the requirements for the use of mitigation strategies changes, which will most likely not occur prior to Spring 2021.

The January DPH Guidance advises that “[i]n all cases, indoor activities should be restricted to the extent possible, with appropriate mitigation strategies (face covering masks, 6 [feet] or more distancing when possible, etc.) in place for all indoor activities and those outdoor activities where close contact is expected.”

Some of the additional mitigation strategies recommended by DPH include, but are not limited to, the following:

- Developing and implementing specific written protocols for the COVID-19 prevention strategies to be used during practices and contests and providing those complete written protocols, along with a point-of-contact, to the appropriate local health department prior to the resumption of activities.
- Educating coaches and parents about the risks of COVID-19 spread during athletic activities and the need for strict compliance with protocols, including requirements for quarantine/isolation of cases and close contacts.
- Keeping detailed rosters of participants for all practices and games with appropriate contact information and making that information available to health officials upon request for the purposes of contact tracing.
- Stressing the importance of information-sharing with health authorities performing contact tracing and making it clear to coaches and participant families that cooperation with contact tracing is a requirement of participation with their athletic organization.
- Considering specific rule changes designed to reduce the frequency, intensity, and duration of contact between participants.

The January DPH Guidance also provides recommendations for the operation of various sporting activities for different sports based on the designated level of risk associated with such sports (*i.e.*, “lower risk sports,” “moderate risk sports,” and “higher risk sports”). There are different recommendations for different “tiers” of activities depending on the sport involved.

CIAC 2020-2021 Winter Sports Plan

See [https://www.casciac.org/pdfs/CIAC Approved Winter Sports Plan v1-14-2020.pdf](https://www.casciac.org/pdfs/CIAC%20Approved%20Winter%20Sports%20Plan%20v1-14-2020.pdf).

- In consideration of the State Department of Public Health’s Average Daily Rate of COVID-19 Cases Among Persons Living in Community Settings per 100,000 Population By Town (<https://casci.ac/6211>), schools located in towns color coded as “grey”, “yellow”, or “orange” may proceed with offering winter interscholastic sports as recommended in this guidance. The CIAC, in consultation with the CSMS Sports Medicine Committee, strongly encourages schools located in towns color coded as “red” to review the COVID climate in that district, with that district’s school doctor and local DPH, in consideration of the appropriateness to continue with game competitions. The principal or her/his designee of schools located in towns color coded as “red” must notify their league commissioner and the CIAC whether they choose to continue with game competition. Any member school that elects to suspend game competition may continue low risk non-contact sport specific skill work and conditioning provided that such activity has been approved by school administration, in consultation with local DPH.
- The CIAC position on fan/spectator attendance is that fans should not be allowed at interscholastic contests or practices. We understand the complexities of individual districts who use public fields and affirm that the ultimate decision rests with the district; however, the CIAC believes that prohibiting fan/spectator attendance aligns best with the goals of education-based athletics. Any allowance for spectators/fans should align with DECD sector rules.

School Reopening Guidance

See <https://portal.ct.gov/-/media/SDE/COVID-19/CTReopeningSchools.pdf>.

The School Reopening Guidance includes multiple requirements regarding maintaining appropriate social distancing in schools. Such social distancing requirements perforce will impact the number of individuals who can safely gather in one place simultaneously. These requirements include the following:

- Review building space and reconfigure available classroom space, such as gymnasiums and auditoriums, to maximize social distancing, consistent with public health guidelines in place at that time.
- Maximize social distancing between student workstations, achieving 6 feet when feasible, when determining the classroom layout. Desks should face in the same direction (rather than facing each other), or students should sit on only one side of tables, spaced apart.
- In conjunction with the considerations outlined [in the School Reopening Guidance] concerning classroom and hallway social distancing rules, assist staff and students to maintain social distancing between individuals to reduce the

transmission of the virus per the public health guidelines at that time.

- Be prepared to adjust the approach to social distancing if guidance from the CDC or DPH changes due to shifting public health data or evolving understanding of COVID-19 disease, including transmission.
- Follow all CDC, state, and local guidelines related to social distancing and disinfecting areas and equipment used for physical education and physical activity, including recess.

In addition, the School Reopening Guidance provides, in relevant part, the following “guidance” (not requirements) concerning physical education and physical activity. Notably, such guidance includes adhering to “restrictions on gatherings” and consulting guidance provided by the CIAC:

- Provide physical education through a combination of in-classroom instruction and activities tailored according to available spaces, restrictions on gatherings, and use of shared equipment.
- Match the instructional design to the available space; use stations, marked off areas, and staggered participation to ensure separation and distancing between students during activities.
- Plan for regular cleaning and disinfecting of all indoor and outdoor facilities, playscapes, and equipment between use by students.
- For further considerations on interscholastic athletics and activities, consult the guidance provided by the CIAC.

III. Duration of DECD Rules and Enforcement Authority.

Governor Lamont declared public health and civil preparedness emergencies as a result of the COVID-19 outbreak on March 10, 2020 and renewed and issued new declarations of such public health and civil preparedness emergencies on September 1, 2020. Pursuant to Executive Order 9L, with limited exception, Governor Lamont extended unexpired Executive Orders issued pursuant to his declaration or renewed declaration of public health and civil preparedness emergencies until February 9, 2021. Similarly, Executive Order 9L states that “[a]ny unexpired order, rule, regulation, directive or guidance issued by any official, agency, department, municipality, or entity pursuant to an unexpired COVID-19 Order, which by its own terms provides that it shall remain in place for the duration of the public health and civil preparedness emergency shall remain in effect until February 9, 2021, unless earlier modified or terminated by the issuing authority or a subsequent executive order.” Therefore, the Executive Order authorizing DECD to establish mandatory rules for sports and DECD’s Gathering

Restrictions and Sector Rules will expire on February 9, 2021, unless modified or extended.

On January 26, 2021, Governor Lamont issued a declaration, again renewing the existing public health and civil preparedness emergencies throughout the State of Connecticut and declaring that new states of public health and civil preparedness emergency exist throughout the State. The declaration states that the new and renewed states of emergency shall run concurrently and remain in effect until April 20, 2021, unless earlier terminated by him.

As of the date of this memorandum, Governor Lamont has not issued an Executive Order extending, from February 9 through April 20, 2021, unexpired Executive Orders or rules and regulations issued pursuant to such orders. However, the restrictions and rules discussed above are based on public health guidance issued during the COVID-19 Pandemic, and even if such rules are not extended, they may well establish the standard of care that sports teams and coaches should follow during the COVID-19 Pandemic. Regardless of any future extensions of Executive Orders and related rules, any rules and restrictions articulated in the School Reopening Guidance will remain in effect until modified or rescinded.

Finally, it bears emphasis that the Executive Orders have the force of law. In addition, on November 24, 2020, Governor Lamont issued Executive Order 9N, granting additional enforcement authority regarding violations of size and capacity restrictions. Executive Order 9N provides, in relevant part:

Except as set forth herein, an owner or a person having possession of, or exercising dominion and control over a nonresidential property who violates the size or capacity limitations set forth in the DECD Sector Rules and DECD Gatherings Capacity Limits or other rules issued by the Commissioner of Economic and Community Development [(the “DECD Rules”)], as amended from time to time, shall be subject to a civil penalty in the amount of \$10,000.00 per violation.

Executive Order 9N is not clear as to its applicability to school districts. However, school districts should be mindful that entities subject to the DECD Rules could be subject to a substantial fine, which indicates a heightened concern about the significance of any such violations during the COVID-19 Pandemic.

* * *

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