



Tier 3 Mitigation and School Activities

As COVID positivity rates continue to climb in Illinois, Governor Pritzker issued **Executive Order 2020-73** which went into effect on November 20, 2020, requiring all counties in Illinois to apply Tier 3 mitigation strategies. Conflicting opinions and questions have been raised about whether school districts are required to follow the Tier 3 mitigations. This FAQ attempts to clarify these issues and assist you during this complex time.



1 What do the Tier 3 Mitigation strategies entail?

The Executive Order (EO) applies additional strategies intended to slow the spread of COVID by limiting groups and encouraging individuals to stay home when possible. The EO continues to reiterate the need for social distancing, wearing face coverings, and conducting activities outdoors when possible. The EO also prohibits the use of indoor meeting spaces for gatherings of any size, which has caused quite a bit of confusion about whether and how it applies to schools.



2 Does the EO govern instructional activities?

The EO specifically excludes K-12 instructional activities from its requirements. ISBE recently issued a comprehensive [FAQ](#) document that reiterates that the EO does not apply to instructional activities, but that schools otherwise must follow the public health guidance issued in the [Part 3 Joint Transition Guidance](#), which includes:

- The use of appropriate personal protective equipment (PPE), including face coverings
- Prohibiting more than 50 individuals from gathering in one space
- Six feet of social distancing must be observed, to the extent possible
- Symptom screenings and temperature checks must be conducted upon entry; alternatively, individuals may self-certify that they are free of symptoms
- An increase in schoolwide cleaning and disinfection

3 Does the EO govern non-instructional student activities?

Yes. Tier 3 mitigation measures do specifically apply to non-instructional student activities such as sports and extracurricular activities. This means that for school-based non-instructional activities, indoor gatherings of any size are prohibited. Outdoor sports and recreation activities are limited to groups of 10 and must adhere to the use of face coverings, social distancing, and the additional public health requirements listed above.

Other non-instructional student activities must follow the Tier 3 mitigation strategies for meetings and events or places of public amusement. Indoor meetings of student groups of any size are prohibited and outdoor recreational activities are capped at 25% occupancy, and individuals must strictly adhere to social distancing and use of face coverings. Additionally, reservations for outdoor activities are required and groups should be limited to no more than 10 individuals.

4 What does this mean for school board meetings?

The EO specifically exempts governmental functions and ISBE's FAQ clarifies that this includes school board meetings. This means that school board meetings may be held in person and school districts do not technically need to abide by the 10- or 25-person capacity limits set forth in the Tiered Mitigation Plan. While not required, we do recommend that when districts choose to hold in-person board meetings, the district should plan for limited capacity such as limiting the meeting to 10 or fewer participants in the room and having others participate by a remote platform or in overflow rooms of 10 individuals or less. Districts must also adhere to other safety measures such as the use of face coverings and social distancing.

Although in-person board meetings are allowed, ISBE recommends holding meetings remotely whenever possible. The Open Meetings Act was amended to allow remote school board meetings under certain conditions. To hold a meeting remotely, the District must follow 105 ILCS 120/7. Examples of requirements include:

- Use of a platform where all members of the public can hear the discussion and all votes
- At least one member of the Board, chief legal counsel, or chief administrative officer physically

present at the regular meeting location unless unfeasible

- All votes conducted by roll call
- 48 hour notice (unless unfeasible) that the meeting will be held remotely
- Provision of a method for the public to submit public comments

For additional guidance on holding school board meetings remotely, please see our [Remote Meetings Decision Tree](#) and our [June 10, 2020 newsletter](#).

5 Can districts hold meetings such as staff meetings, IEP meetings, or professional development?

The EO prohibits the use of indoor meeting spaces for gatherings of any size, and this includes meetings such as staff meetings, IEP meetings, and professional development.

Related to professional development, we have had several districts inquire about completing training requirements for staff involved in physical restraint and timeout. While the regulations on timeout and physical restraint require that all staff who are involved in these practices must receive training,



there is not a specific deadline. However, in an [FAQ](#) released by ISBE over the summer, ISBE stated “Given the timing of the permanent regulations in April 2020, for the 2019-2020 and 2020-2021 school years, the eight hours of annual training must be completed no later than December 31, 2020.” (Question E-1, p. 26). It is important to note that while the training requirements were expanded, all areas of required training can be completed online with the exception of training in physical restraint. The move to Tier 3 mitigation has many districts worried about meeting this deadline, especially with respect to physical restraint training.

While we don’t have additional information from ISBE at the present time, we think the timeline in the FAQ was intended to provide districts with some flexibility to get the training done, meaning that because the requirements are expanded to include additional areas of training, not all areas have to be completed right at the beginning of the year, but rather by December 31. It has always been a requirement that an individual must have completed training in physical restraint before using physical restraint, so we believe this is addressing the other areas that are now required such as restorative practices and trauma informed practices.

With this in mind, and knowing that in-person training cannot be completed at this time, we encourage school districts to provide all areas of required training except training in physical restraint prior to Dec. 31 and then provide physical restraint training when districts can resume in-person training. As long as an individual does not engage in physical restraint until receiving all training, and the training is completed “annually” we believe individuals will still meet the requirements as outlined in the [ISBE regulations](#).

We will continue to provide updated information to help you navigate the complexities of meeting the needs of students, staff, and the community during the pandemic. Please don’t hesitate to contact us if we can be of additional assistance.

This material is intended for general information purposes only and does not, nor is it intended to, constitute legal advice. Contact your attorney for advice on specific legal issues.