

May 11, 2020

William R. Harbron
Superintendent
Dover School District
60 Locust Street
Dover, NH 03820

RE: 2020 Graduation Ceremony

Superintendent Harbron,

I was asked to provide legal guidance regarding your upcoming high school graduation ceremony. I understand that the current plan is to conduct graduation in what is being referred to as a “drive-up” model, whereby each student will individually drive onto the high school campus and pull up to the front of the school, leave the car to walk up to a table and retrieve a diploma, stop briefly to have their official picture taken with up to four members of their household, return to the car, and leave.

I understand that under the “drive-up” model, the District’s plan to mitigate risk of exposure to COVID-19 include the following measures:

- There will only be three DHS administrators present at graduation, no other faculty or staff.
- There will only be one photographer present at graduation.
- There will be no physical contact between the administrators and the students/families.
- Students may only bring up to four members of their *immediate* household to the graduation ceremony in order to comply with the Governor’s prohibition on gatherings of more than 10 people.
- An administrator will place the student’s diploma on a table prior to the students’ arrival and the administrator will step back at least six feet as the student approaches to retrieve their diploma. The table will then be disinfected between each approaching student.
- Students will be given a scheduled time to come to the school over the course of several days so that students and families do not overlap with each other.

Assuming that the District takes these and any other reasonable precautions necessary based on evolving guidelines from federal and state authorities, it is my opinion that this method poses the lowest risk (aside from a solely virtual graduation) to the District and to the students and families.

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Unfortunately, as you know, a traditional graduation ceremony is not an option this year. The UNH Field House cannot be utilized for graduation pursuant to the Governor's order. As you are aware, Governor Sununu has prohibited gatherings of more than 10 people. A meeting inside the UNH Field House of all graduating students, parents and friends would constitute more than a thousand people, which would certainly be in violation of the Governor's order.

I also understand that there have been requests to conduct a "drive-in" model graduation, whereby the students and their families would park and remain in their cars during a traditional graduation ceremony. The "drive-in" model carries significant legal risk for Dover. One concern regarding this model is whether it is reasonable to expect students and their family members (including young children and the elderly) to remain in their vehicles during a ceremony that would take, at minimum, four hours. From a practical perspective, it will be difficult if not impossible to prevent students and family members from leaving their vehicles, making this an unenforceable component of the graduation ceremony. Failing to enforce the Governor's prohibition on gatherings could lead to legal trouble for the District and could also contribute (even unknowingly) to the spread of COVID-19 in the community. If students and family members exit the vehicle, you have no mechanism for removing them from the ceremony or forcing them back into their vehicles, leading to a violation of the Order limiting gatherings of 10 people. Further considerations include how or if you might enforce the use of face masks and sanitation concerns, including toilets, hand washing and close contact between students and community members before and after the official ceremony.

Because the "drive-in" model carries significant legal risk for the District, I do not recommend it. This model exposes the District to potential liability claims for negligence based on failure to protect students, employees, and visitors from being exposed to COVID-19. Such a claim could arise from exposure due to the District's alleged failure to use reasonable care to protect visitors, employees, students, and their families. Protecting the District from COVID-19 related liability exposure is a necessary and critical consideration, despite the tremendous impact that this will have on the students who miss out on a traditional graduation experience. While a drive-in graduation model is being considered by some school districts in NH, it is not a model that will work for every school district. The decision for what works in Dover must be considered based on the needs of the district and on the District's specific circumstances.

Based on the information I have been given, it is my opinion that the "drive-up" diploma ceremony carries the least risk for the District, aside from holding a completely virtual graduation.

Please let me know if you have any questions.

Best,

Meghan