

May 19, 2020

Amanda Russell
School Board Chair
Dover School District
60 Locust Street
Dover, NH 03820

RE: 2020 Commencement Exercises

Amanda:

I have been asked to brief you and the rest of the Dover School Board on potential issues related to an in-person graduation ceremony that has been proposed by student leaders to take place on Dunaway Field at Dover High School. While the Governor has recently issued a new executive order that seems to suggest that graduation ceremonies may take place in-person so long as CDC protocols are followed, there are still significant risks for District liability that must be considered in making such a determination.

Executive Order 2020-09, signed on May 15, 2020, states that “K-12 school graduation events held in accordance with Division of Public Health guidelines issued by the Department of Education are exempted from Emergency Order #16.” As you are aware, Emergency Order #16 prohibits gatherings of ten or more individuals. Thus, it seems that Dover High School *could* hold an outdoor graduation as long as each of the District’s 330 graduates maintains a six-foot perimeter at all times, wears a face mask at all times while on school property, and meets on-site screening requirements such that the graduate does not show any symptoms of COVID-19.

The District’s ability to implement an in-person graduation is largely dependent on the students’ ability to cooperate, completely and without exception, with all of the above-mentioned restrictions. There can be no hugs, kisses, high fives, fist bumps, etc. And while under normal circumstances it would be sufficient to ask a student who breaks protocol to leave campus, in this case, the damage has already been done. One breach of social distancing could potentially prove deadly to a student and/or their close contacts.

If the District decides to hold an in-person graduation, you can (and should) require participating students to sign liability waivers. For students under 18, you should ask their parent or guardian to sign a waiver allowing them to participate. The waiver would require the student to assume the risk of attending the graduation ceremony during a global pandemic, and would release the District from all liability resulting from any illness arising out of the ceremony, up to and including death.

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While the liability waiver is a good protection for the District to have in place with respect to graduates, it does not protect the District from claims that could be made by individuals who affiliate with students following graduation and ultimately become infected with COVID-19. As we all know, there are a significant number of individuals who may be asymptomatic carriers of COVID-19. Any screening process in place at the graduation would not catch asymptomatic carriers which could lead to the spread of the virus, both among the student population and within the community. While I do not think those third-party claims would have substantial legal merit (meaning the District likely would not end up owing money damages), the cost of legal defense is significant and worth considering in evaluating the risk of an in-person graduation. The reputational damage to the District that could result in the media if a student's family member ultimately becomes seriously ill is also something to consider.

Another consideration is the District's responsibility to provide a safe and healthy working environment for staff members. I understand that staff members who attend graduation generally do so at their own election. However, my understanding is that administrators are required to attend graduation as part of their job responsibilities. A significant number of staff members would be required to participate in order to make an in-person graduation effective, particularly one that requires the level of organization and compliance as detailed above. All staff members attending would have to commit to risking their own health and safety in order to protect students. For example, while the District would strive to maintain an environment in which staff members could keep social distance from all students throughout the ceremony, an emergency may necessitate that a staff member break social distancing to assist a student. We cannot guarantee that staff members will be able to maintain CDC protocols throughout the graduation, which opens up the risk that staff members will get sick. And while it is true that any staff member who gets COVID-19 as a result of the graduation would file a claim for worker's compensation, and it is unlikely to cost the District a significant amount of money, it is worth considering both the risk to our staff, and the negative publicity that may result.

Finally, I understand that there are a number of medically fragile students who are in this year's graduating class. Those students may be at heightened risk for COVID-19, and while the District should still require them to sign a waiver if they plan to attend, those students may opt out of attending an in-person graduation. This may lead to claims of disability discrimination, as those students may argue that they were deprived of a fundamental piece of their education that was provided to the rest of their classmates. Again, I do not think these claims are likely to be successful from a legal standpoint, but there is still a defense cost to consider.

In making your determination regarding an in-person graduation, please bear these significant risks and liabilities in mind.

Sincerely,

Meghan S. Glynn