



Legal Alert: Drive-In Graduation Ceremonies for the Class of 2020

On May 8, 2020, the New Jersey Department of Education (“NJDOE”) issued a memorandum to all chief school administrators to provide much-needed guidance to school districts regarding graduation ceremonies for the class of 2020 and other school-sponsored celebrations and events currently planned to recognize students during the upcoming months. The May 8, 2020 memorandum explicitly indicated that pursuant to Executive Order 107 (“EO 107”), “only virtual graduation ceremonies can be planned at this time.”

Similarly, in a letter dated May 9, 2020, to the Department of Education and all public and nonpublic schools, Colonel Patrick J. Callahan, State Director of Emergency Management, advised that “virtual celebrations and other remote forms of recognition should take the place of any in-person or public ceremonies.” The letter also stated that any “in-person ceremonies, including graduations, all parades, including ‘wave parades,’ that invite people to gather at a certain location, proms, and other similar celebrations” would be in violation of EO 107, and must be cancelled or postponed until the restrictions of the order are lifted. Generally, under Colonel Callahan’s Administrative Order 2020-04, “any event, including a graduation that has more than 10 people in attendance,” would violate EO 107.

However, in subsequent guidance that was provided during a phone conference with school officials on May 11, 2020, Colonel Callahan stated, “A wave parade that does not summon students or individuals to one location, so if that’s seven cars want to drive by a senior’s house and that family is on the front porch or in the yard, that is certainly not in violation” of the Executive Orders. Colonel Callahan reiterated that his May 9, 2020 letter was intended to discourage “directing students to gather on the front lawn of the school, at a football stadium, at a town hall,” which would violate EO 107, and further clarified as follows:

“If people wanted to get in cars and drive to every graduate at a high school across town and that graduate and mom and dad were on the front porch or front lawn, that is certainly okay. But it’s the summoning of people to gather together for a graduation or that wave parade that I hope I was clear in the letter.”

On May 13, 2020, during a daily briefing on issues related to COVID-19, Governor Murphy advised that under the same rules for gathering in vehicles that apply to religious services and drive-in movies, schools may hold drive-in graduation ceremonies, provided that specific restrictions are strictly followed. Specifically, Governor Murphy indicated that all attendees at such a drive-in ceremony must remain entirely inside their vehicles, with all

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windows and sunroofs fully closed, throughout the event. These restrictions are consistent with Executive Order 142 (“EO 142”), which was issued on May 13, 2020.

Under EO 142, any gathering that will include more than ten (10) persons will continue to be in violation of EO 107, unless it complies with the following specific conditions, which would allow for the possibility of an in-person, drive-in graduation event:

- (1) All attendees “must arrive in a vehicle and they must remain in that same vehicle during the entire gathering.”
- (2) Vehicles “must remain entirely closed at all times,” including windows, doors, sunroofs, and tops of the vehicle, unless: (a) the vehicle is more than six (6) feet from any other vehicle or individual; however, this rule does not apply to a limited number of individuals organizing or maintaining the gathering; or (b) a law enforcement officer, public official, or private security guard asks an attendee to open any vehicle windows, doors, sunroofs, and/or tops.
- (3) “If there are individuals organizing or maintaining the gathering, and who are not in closed vehicles, such individuals must follow all applicable Executive Orders and Administrative Orders, and must wear cloth face coverings or more protective face coverings in any settings where other social distancing measures are difficult to maintain, except where doing so would inhibit that individual’s health.”
- (4) If a gathering requires pre-payment or seeks donations, all payments must be made by contactless options offered online or by phone, “wherever feasible.”
- (5) Individuals may leave their vehicles or open their vehicles’ windows, doors, sunroof, or tops, or approach a vehicle, “if done to protect their health or safety or the health or safety of another individual, or to access a restroom.”

The extent to which the restrictions enumerated in EO 142 that apply to a drive-in graduation event may or may not be practically enforceable should be carefully considered by each school district on a case-by-case basis. Because of potential liability issues and the high likelihood of difficulty enforcing the requirements that attendees remain confined to their vehicles, with all windows and sunroofs completely closed, districts should exercise caution in determining whether or not to proceed with a drive-in graduation event.

To summarize, New Jersey school districts should be mindful of the following guidelines when planning graduation ceremonies and similar school-sponsored events to take place within the next few weeks:

- (1) Traditional in-person school graduation ceremonies and similar celebrations and events are not permitted, insofar as they would violate EO 107, which prohibits gatherings of more than ten (10) people in attendance.
- (2) Virtual ceremonies and events, whether conducted by live videoconferencing or by creating a video recording designed to recognize and celebrate students and their graduations, are entirely permitted.
- (3) “Wave parades” are permitted, provided that they do not direct, summon, or invite students and/or their family members to convene or gather together in a single location, and provided that no gatherings of more than ten (10) people occur at any time before, during, or after the parade. For example, if students and family members remain on a porch or lawn at their homes, as others participate in a “wave parade” in front of the home while on the street in a car, on a bicycle, or on foot, such a “wave parade” would be permitted. If the wave parade participants are in vehicles, they must remain in their vehicles and cannot approach students and their families.
- (4) Drive-in graduation ceremonies and events are permitted, provided that the event strictly complies with each of the conditions stated in EO 142, as described above.

As a general matter, it is strongly recommended that districts confer with their insurance carriers to determine whether any coverage issues may exist with regard to any events the district may be planning, and also discuss any planned events with local law enforcement. Finally, in view of the constantly changing nature of the guidelines pertaining to graduation ceremonies to be held during the Spring of 2020, school districts should be aware that the above information is subject to modification at any time, if the NJDOE or the State in general adopts new guidance or rules regarding graduations and similar events.

The Busch Law Group will continue to provide legal updates on this and other significant COVID-19 related issues as necessary. Should you have any questions or concerns, the attorneys at The Busch Law Group are always available to assist you.

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