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CONFIDENTIAL ATTORNEY
CLIENT COMMUNICATION

VIA E-MAIL ONLY (t.mccoy@sau33.com)

Dr. Tina H. McCoy, Superintendent
Raymond School District, SAU #33
43 Harriman Hill Road
Raymond, New Hampshire 03077-1509

Re: Raymond School District – Carroll Lake Beach

Dear Superintendent McCoy:

You wanted to know whether there are any legal issues or concerns that the District should take into account before opening the beach for swimming.

As the landowner, the District can be held responsible for activities that occur on its land. The MOU attempts to make the Town responsible for that liability by requiring it to insure the beach and name the District as an additional insured. Since the District and Town have the same taxpayers, I did not add an indemnification provision requiring the Town to indemnify the District relating to any claims involving Carroll Lake Beach. I could add the indemnification requirement if the District wants.

There are two recreational immunity statutes that limit liability for injuries when landowners open up their properties for recreational activities: RSA 212:34 and RSA 508:14. "Landowners" are defined as owners, lessees, occupants, or persons managing, controlling, or overseeing the premises on behalf of owners, lessees, or occupants. Both statutes apply if the landowner does not charge a fee or seek compensation for the use. The New Hampshire

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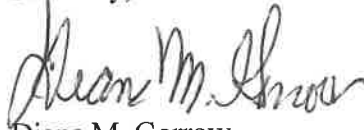
Supreme Court has held that both statutes apply to injuries on the water. Kurowski v. Town of Chester, 170 N.H. 307 (2017); Coan v. New Hampshire Department of Environmental Services, 161 N.H. 1 (2010). The types of activities that are covered by the statutes include diving into a lake and striking an individual's head on a rock; diving into shallow water from a dock; drowning; and being hit by someone on a rope swing over the water. Both immunity statutes do, however, have exceptions for certain intentional acts.

RSA 212:34, V(c) also does not provide immunity "When the injury was caused by acts to persons to whom permission to enter or use the premises for outdoor recreational activity was granted, to third persons as to whom the landowner owed a duty to keep the premises safe or to warn of danger." During the school day and during school activities, the District does owe a duty to keep its properties safe for students, staff, and visitors. During the school day, my assumption is that students would not have permission to use the beach for outdoor recreational activities. It is not clear whether that exception would impose liability upon the District if a student was injured on the beach during school hours or school-sponsored activities.

It is clear the District's liability exposure is greatest, although not certain, during the school day and during school activities. To minimize that exposure the District would need to properly supervise all students for activities outside, especially those in the vicinity of the beach. To try to minimize that exposure, the District could require the Town to fence and lock the beach except when it is open for use.

If you have any questions, please let me know.

Sincerely,



Diane M. Gorrow

E-mail: gorrow@soulefirm.com

DMG:sds

Cc: Marjorie V. Whitmore, Business Administrator (via e-mail only)