Executive Order 2020-142 (COVID-19) (June 30, 2020)

No. 2020-142

Provision of pre8-12 education for the 2020-2021 school year

EXECUTIVE ORDER

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article V of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended (EMA), MCL 30.401 et seq., and the Governor's Powers of the Governor Act of 1945, 1945 PA 302, as amended (EPGA), MCL 10.31 et seq.

Since then, the virus spread across Michigan, bringing deaths in the thousands, hospitalizations in the tens of thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 2, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945. And on April 30, 2020, finding that COVID-19 had created emergency and disaster conditions across the State of Michigan, I issued Executive Order 2020-67 to continue the emergency declaration under the EPA, as well as Executive Order 2020-68 to issue new emergency and disaster declarations under the EMA.

Those executive orders have been challenged in *Michigan House of Representatives v. Whitmer*, No. 164627 (Mich. filed May 1, 2020). The Court of Claims ruled that Executive Order 2020-67 is a valid exercise of emergency powers. *Id.* The court also ruled that *Wayne County v. Hathcock* *ex rel.* Executive Order 2020-68 is not a valid exercise of authority under the Emergency Management Act. Both of those rulings are being challenged on appeal.

The Emergency Powers of the Governor Act provides a sufficient legal basis for issuing this executive order. In relevant part, it provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

Nevertheless, subject to the ongoing litigation and the possibility that current rulings may be overturned or otherwise altered on appeal, I also invoke the Emergency Management Act as a basis for executive action to combat the spread of COVID-19 and mitigate the effects of this emergency and the prolonged disaster, with the intent to preserve the rights and protections provided by the EMA. The EMA vests the governor with broad powers and duties to "cope[] with danger to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). This executive order falls within the scope of those powers and duties, and to the extent the governor may declare a state of emergency and a state of disaster under the Emergency Management Act when emergency and disaster conditions exist yet the legislature has not granted an extension request, they too provide a sufficient legal basis for this order.

To suppress the spread of COVID-19 and prevent the state's health care system from becoming overwhelmed, it was reasonable and necessary on March 13, 2020 to issue Executive Order 2020-5, which temporarily closed schools. That order was followed by Executive Orders 2020-35 on April 3, 2020, and then Executive Order 2020-65 on April 30, 2020, closing in-person learning for the remainder of the school year and providing for continuity of learning plans. Although the virus has remained aggressive and persistent, those orders were a key piece of the Michigan-tailored response strategy that curtailed the spread of COVID-19 in Michigan. Where Michigan was once among the states most heavily hit, our per-capita case rate is now roughly equivalent to the national average.

This executive order provides a structure to support all schools in Michigan as they plan for in-person or pre8-12 education in the fall. Under this order, school districts must adopt a COVID-19 Preparedness and Response Plan laying out how they will cope with the disease across the various phases of the Michigan Safe Start Plan. In turn, the accompanying Michigan Return to School Roadmap offers a guide to plan for and implement these appropriate during each phase. There's no one-size-fits-all solution: what works in Lansing may not work in Sault Sainte Marie. Districts will retain flexibility to tailor their instruction to their particular needs and the disease conditions present in their regions.

In the coming weeks and months, I will be working closely with the Legislature to develop a comprehensive recovery plan that meets the needs of Michigan students while protecting students, families, and communities from the risk of infection. In the meantime, this executive order and the Return to School Roadmap will provide the scaffolding for districts to develop their plans for getting our kids back in the classroom.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Coronavirus relief funds under the Coronavirus Aid, Relief, and Economic Security Act will be provided and may be used for districts to aid in developing, adopting, and following a COVID-19 Preparedness Plan under section 2 of this order.

2. **Preparedness Plan.** Every school district and nonpublic school must develop and adopt a COVID-19 Preparedness and Response Plan ("Preparedness Plan") that is informed by the Michigan Return to School Roadmap from the COVID-19 Task Force on Education and Return to School Advisory Council ("Return to School Roadmap"). The plan must, at a minimum:

a. Describe the policies and procedures that the district will follow when the region in which the district is located is in Phase 1, 2, or 3 of the Michigan Safe Start Plan. (Nonpublic schools are exempt from this subsection.) Those policies and procedures must, at a minimum:

i. Require the closure of school buildings to anyone except:

A. District employees or contractors necessary to conduct minimum basic school operations consistent with a Preparedness Plan, including those employees or contractors necessary to facilitate alternative modes of instruction, such as distributing materials and equipment, or performing other necessary in-person functions.

B. Food-service workers preparing food for distribution to students or their families.

C. Licensed child-care providers and the families that they serve.

2. Suspend athletics, after-school activities, inter-school activities (e.g., debate competitions), and busing.

3. Offer alternative modes of instruction other than in-person instruction and a summary of materials each student and the student's parent or guardians will need to meaningfully access the alternative modes of instruction included in the Preparedness Plan. If the Preparedness Plan relies on electronic instruction, the Preparedness Plan must consider how the district will aid students who lack access to computers or to the internet.

4. Provide for the continuation of food distribution to eligible students.

5. Provide for the continued pay of school employees while redeploying staff to provide meaningful work in the context of the Preparedness Plan, subject to any applicable requirements of a collective bargaining agreement.

b. Describe the policies and procedures that the district will follow when the region in which the district is located is in Phase 4 of the Michigan Safe Start Plan. Those policies and procedures must, at a minimum:

i. Require the wearing of face coverings, except during meals and unless face coverings cannot be medically tolerated, for:

A. All staff and all students in grades pre-kindergarten and up when on a school bus.

B. All staff and all students in grades pre-kindergarten and up when in indoor hallways and common areas.

C. All staff when in classrooms.

D. All students in grades 6 and up when in classrooms.

E. All students in grades kindergarten through 5 unless students remain with their classroom throughout the school day and do not come into close contact with students in another class.

2. Prohibit indoor assemblies that bring together students from more than one classroom.

3. Incorporate the Return to School Roadmap's required protocols governing hygiene, cleaning, athletics, screening, testing protocols, and busing and student transportation.

c. Describe the policies and procedures that the district will follow when the region in which the district is located is in Phase 5 of the Michigan Safe Start Plan.

d. Address each subpart of the Return to School Roadmap and indicate if a school plans to active any protocol that is highly recommended.

3. **Preparation and Approval.**

a. If a district lacks the capacity to implement a Preparedness Plan on its own, a district may partner with one or more other districts or intermediate districts. A district may enter into one or more cooperative agreements under section 11a(6) of the Revised School Code, MCL 380.11a(4), to provide for implementation of a Preparedness Plan.

b. By August 15, 2020 or seven days before the start of the school year for students, whichever comes first:

1. The local school district board (or, for public school academies, the public school academy board of directors) must approve a district's Preparedness Plan.

2. The chief or designated administrator of a nonpublic school must approve a nonpublic school's Preparedness Plan.

c. By August 17, 2020:

1. Intermediate school districts must collect Preparedness Plans from all of the schools within their constituent districts and transmit such plans, at the same time to the extent possible, to the Superintendent of Public Instruction ("Superintendent") and to the State Treasurer.

2. Authorizing bodies must collect plans from all of the public school academy boards of directors that they authorize and transmit such plans, at the same time to the extent possible, to the Superintendent and to the State Treasurer.

3. The chief or designated administrator of a nonpublic school must transmit copies of approved Preparedness Plans to the Superintendent.

d. By August 17, 2020, districts and nonpublic schools must prominently post their approved Preparedness Plans on the home page of their public internet sites.

4. **Special Education**

a. When a district provides in-person instruction to its students without disabilities, the district must also provide in-person instruction to its students with disabilities, consistent with their individualized education plans.

b. When schools are closed to in-person instruction, districts must strive in good faith and to the extent practicable, based upon available resources, technology, training, and curriculum, as well as the circumstances presented by COVID-19, to provide equal access to any alternative modes of instruction to students with disabilities from birth through age 26. This includes the provision of special services under section 1296 of the Revised School Code, MCL 380.1296.

c. While any state of emergency or disaster related to the COVID-19 pandemic continues, districts shall comply with guidance from the United States Department of Education, including its Office of Civil Rights and Office of Special Education and Rehabilitative Services, and the Michigan Department of Education regarding the provision of alternative modes of instruction to students with disabilities in light of the impact of COVID-19.

d. Districts shall, to the extent practicable and necessary, make individualized determinations whether and to what extent compensatory services may be needed for students in light of the school closures during the 2019–2020 school year.

e. The state will not penalize a district or a nonpublic school that has been allocated federal funds for the purpose of providing special education services due to a school's inability to provide those services on account of a school closure prompted by a COVID-19 state of emergency or disaster.

5. **Federally Required Assessments.** By July 15, 2020, the Superintendent is strongly encouraged to request by letter that the U.S. Department of Education waive the requirement that Michigan students take assessments as a condition of continued receipt of funding under the Every Student Succeeds Act.

6. **Implementation.**

a. All versions of Executive Order 2020-65 suspending strict

d. All provisions of Executive Order 2020-65 suspending strict compliance with the School Aid Act or the Revised School Code for the 2019–2020 school year—including all provisions in Part I(2) through Part I(13) and all provisions in Parts IV, VII, VIII, and IX—remain in effect through the fiscal year ending September 30, 2020.

b. Except as provided for in subsection (a) of this section, Executive Order 2020-65 is rescinded.

c. The limitation on the size of indoor social gatherings and events in section 5 of Executive Order 2020-110 or any executive order that may follow from it does not apply to students in a classroom setting.

d. All schools, public and private, are subject to the rules governing workplace safeguards established in section 1 of Executive Order 2020-114.

e. For purposes of this order, a district that straddles regions will be treated as if it were located solely in the region designated as higher risk.

f. All schools, public and private, must cooperate with the local public health department if a confirmed case of COVID-19 is identified, and in particular must collect the contact information for any close contacts of the affected individual from two days before he or she showed symptoms to the time when he or she was last present at the school.

g. A district or nonpublic school without an approved Preparedness Plan is not permitted to open or to continue in operation for in-person instruction for the 2020–2021 school year.

h. To mitigate the impact of COVID-19 on educational outcomes, a district may adopt year-round school or a year-round program for the 2020–2021 school year or start the 2020–2021 school year before the first Monday in September.

i. Any closure of schools relating to COVID-19 shall not affect an employer contribution, employee contribution, or the accrual of service credit under the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 to 38.1467.

j. For a district with a collective bargaining agreement, this order must be implemented by the district in a manner consistent with the collective bargaining agreement.

k. When the Michigan Department of Education or the Superintendent issues a waiver or suspends an administrative rule pursuant to this order or Executive Order 2020-65, the Superintendent must provide the governor in writing with a copy of the waiver and information relating to the issuance or suspension. Any waiver issued by the Superintendent under Part VII of Executive Order 2020-65 continues in effect through the end of the fiscal year unless otherwise rescinded by the Superintendent.

7. **Definitions.**

a. "Alternative modes of instruction" means modes of student instruction, other than in-person instruction, that may include, without limitation, partnerships with other districts or intermediate districts or community colleges or institutions of higher education, use of vendors, use of online learning, telephone communications, email, virtual instruction, videos, slideshows, project-based learning, use of instructional packets, or a hybrid of multiple modes of learning that still promote recommended practices for social distancing to mitigate the spread of COVID-19.

b. "District" means a school district established under the Revised School Code or a public school academy. "District" does not include an intermediate district, except for an intermediate district that educates PreK–12 students.

c. "Intermediate district" means an intermediate school district established under part 7 of the Revised School Code, MCL 380.601 to 380.705b.

d. "Public school academy" means that term as defined in section 5 of the Revised School Code, MCL 380.5.

e. "Superintendent of Public Instruction" or "Superintendent" means the superintendent of public instruction described in section 3 of article 8 of the Michigan Constitution of 1963.

Given under my hand and the Great Seal of the State of Michigan.

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