STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

SENATE JOURNAL
APR 30 2020 PM9:27

EXECUTIVE ORDER

No. 2020-65

Provision of K–12 education during the remainder of the 2019–2020 school year

Rescission of Executive Order 2020-35

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 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 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 on 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.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers 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). Similarly, the Emergency Powers of the Governor Act of 1945 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).

Section 1 of article 8 of the Michigan Constitution provides that "schools and the means of education shall forever be encouraged." Although the COVID-19 pandemic has required the closure of elementary and secondary schools throughout the state for the remainder of the 2019–2020 school year, schools must continue to provide students the highest level of educational opportunities possible under the difficult circumstances before us. We must therefore enable schools and students to innovate and adapt, and not allow these efforts to be inhibited by requirements and restrictions that are misplaced in this time of unprecedented crisis.

Executive Order 2020-35 provided such relief. Among other things, that order suspended all in-person instruction in our K–12 schools for the remainder of the 2019–2020 school year. It also provided for continuity of learning to the greatest extent possible during this unprecedented time, and temporarily suspended strict compliance with certain rules and procedures under the Revised School Code and the State School Aid Act of 1979. This order extends and clarifies that relief, as it remains reasonable and necessary to suppress the spread of COVID-19 and protect the public health and safety of this state and its residents. It also expands that relief to temporarily suspend certain requirements under the Teachers' Tenure Act, 1937 PA 4 (Ex. Sess), as amended, MCL 38.71 et seq., and for the Great Start Readiness Program, MCL 388.1632 and 388.1639, as it is reasonable and necessary to ensure that the COVID-19 pandemic does not frustrate this state's ability to retain talented teachers or eliminate opportunities to assist at-risk preschool children in becoming ready for school.

With this order, Executive Order 2020-35 is rescinded.

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

I. Suspension of in-person K–12 instruction, GSRP program delivery, and early childhood programs for the remainder of 2019–2020 school year

1. Except as provided in section III of this order, in-person instruction for pupils in kindergarten through grade 12 ("K–12") is suspended for the remainder of the 2019–2020 school year and school buildings used for the provision of K–12 education must remain closed for the purpose of providing K–12 education in person for the remainder of the 2019–2020 school year. K–12 school sports activities and other in-person extracurricular school activities are suspended while any state of emergency or state of disaster prompted by COVID-19 is in effect. This section applies to all public, nonpublic, and boarding schools in the state.

2. For a district implementing a Continuity of Learning and COVID-19 Response Plan ("CoL Plan") pursuant to section II of this order, all of the following apply:

   (a) Strict compliance with rules and procedures under subdivisions (d) to (f) of subsection (3) of section 101 of the State School Aid Act of 1979 ("School Aid Act"), 1979 PA 94, as amended, MCL 388.1701(3)(d) to (f), is temporarily suspended for the period beginning on March 11, 2020 and ending on the last day of the 2019–2020 school year, to the extent

necessary to waive any requirement that a district have a minimum number of the district's membership in attendance on any day of pupil instruction and to waive any requirement that a district report the percentage of the district's membership in attendance to the Department of Education ("Department").

(b) Strict compliance with rules and procedures under sections 101(3)(a), 101(3)(b), 101(4), 101(6), and 101(10) of the School Aid Act, MCL 388.1701(3)(a), 388.1701(3)(b), 388.1701(4), 388.1701(6), and 388.1701(10), requiring a district to provide at least 1,098 hours and 180 days of pupil instruction, is temporarily suspended to the extent necessary to provide for the following exceptions to that requirement:

(1) In addition to counting as hours and days of pupil instruction under section 101(4) the first six days or the equivalent number of hours for which pupil instruction is not provided because of conditions not within the control of school authorities, the Department shall count up to 13 additional days or the equivalent number of hours for which pupil instruction is not provided due to a closure of schools pursuant to an executive order issued by the governor in response to the COVID-19 state of emergency and/or state of disaster.

(2) Under section 101(10), a district may also count an additional five days or the equivalent number of hours used for the purpose of preparing to provide and providing instruction by alternative modes of instruction pursuant to a CoL Plan as days or an equivalent number of hours of pupil instruction.

(c) Strict compliance with rules and procedures under section 101(9) of the School Aid Act, MCL 388.1701(9), is temporarily suspended to the extent necessary to permit a district that has a Department-approved alternative education program or another innovative program approved by the Department under MCL 388.1701(9) and that does not use a 100% online model of delivery approved before the effective date of this order to use the additional exceptions provided for in section I.2(b) of this order in satisfying the number of days and hours of instruction required under a waiver granted by the Department under section 101(9).

(d) Strict compliance with rules and procedures under section 101(9) of the School Aid Act, MCL 388.1701(9), is temporarily suspended to the extent necessary to waive the minimum number of hours and days of pupil instruction required under section 101(3) of the School Aid Act, MCL 388.1701(3), for any district with a CoL Plan approved under section II of this order. A district with a CoL Plan approved under section II of this order will be considered to be operating a Department-approved alternative education program or another innovative program approved by the Department for the remainder of the 2019–2020 school year only. A district with a CoL Plan approved under section II of this order is not subject to forfeiture of money under section 101 of the School Aid Act,

MCL 388.1701. If the district does not comply substantially with the terms of the CoL Plan, the amount of any forfeiture under MCL 388.1701 will be calculated based on a comparison of the number of hours and days of pupil instruction provided to the minimum number of hours and days of pupil instruction required under MCL 388.1701(3), as affected by this order. A district with a CoL Plan approved under section II of this order is not required to report to the Center the pupils enrolled in a Department-approved alternative education program under MCL 388.1701(9).

3. A school of excellence that is a cyber school, as defined in section 551 of the Revised School Code ("School Code"), 1976 PA 451, as amended, MCL 380.551, and is in compliance with section 553a of the School Code, MCL 380.553a, may continue to educate pupils in a manner consistent with section I.A of this order, and continues to be exempt from the requirements of subsections (3) and (8) of section 101 of the School Aid Act, MCL 388.1701(3) and (8).

4. If before March 11, 2020, a district was providing nonessential elective courses to nonpublic school pupils, homeschool pupils, or both at either a district, intermediate district, or nonpublic school site pursuant to section 166b of the School Aid Act, MCL 388.1766b, and is able to continue to offer the nonessential elective courses through alternative modes of instruction, then the district may, to the extent feasible, provide for such courses in its CoL Plan and continue to offer the nonessential elective courses to nonpublic school and/or homeschool pupils through alternative modes of instruction for the remainder of the 2019–2020 school year.

5. Nothing in this order alters the inapplicability of subsections (3) and (8) of section 101 of the School Aid Act, MCL 380.1701(3) and (8), to eligible pupils enrolled in a dropout recovery program that meets the requirements of section 23a of the School Aid Act, MCL 388.1623a. As used in this section, "eligible pupil" means that term as defined in MCL 388.1623a.

6. The approval of the Superintendent of Public Instruction ("Superintendent") or the Department is not required for a district to make use of a waiver provided for under section I.2 of this order.

7. Strict compliance with rules and procedures under section 6(7)(b) of the School Aid Act, MCL 388.1606(7)(b), is temporarily suspended to eliminate the requirement during the 2019–2020 school year for a district or intermediate district maintaining school during the entire school year to use the fourth Wednesday in April as a pupil membership count day.

8. Strict compliance with rules and procedures under sections 1284 and 1284a of the School Code, MCL 380.1284 and 380.1284a, is temporarily suspended as necessary to facilitate implementation of section I of this order.

9. Strict compliance with rules and procedures under section 104b(4)(b) of the School Aid Act, MCL 388.1704b(4)(b), is temporarily suspended to the extent

necessary to permit a district to include each day that a pupil is deemed in attendance under section I of this order or pursuant to a CoL Plan under section II of this order as a day the pupil was in attendance at school during the 2019–2020 school year for purposes of MCL 388.1704b(4)(b).

10. Strict compliance with rules and procedures under section 29.19 of the Fire Prevention Code, 1941 PA 207, as amended, MCL 29.19, is temporarily suspended for the remainder of the 2019–2020 school year as follows:

    (a) All requirements that a district or intermediate district conduct a minimum number of fire drills, lockdown drills, and tornado drills during the 2019–2020 school year, or conduct such drills after March 11, 2020 and before the end of the 2019–2020 school year, as required under section 19(2) to (6), MCL 29.19(2) to (6), are waived.

    (b) All requirements that a district or intermediate district record or publish documentation pertaining to scheduled and completed fire drills and tornado drills that otherwise would have been required after March 11, 2020, as required under sections 19(1) and (8), MCL 29.19(1) and (8), are waived.

    (c) All requirements for rescheduling drills scheduled after March 11, 2020 but not conducted, and for notifying emergency management coordinators and law enforcement agencies, as required under section 19(8), MCL 29.19(8), are waived.

11. Strict compliance with rules and procedures under sections 1169, 1506 and 1507(6) of the School Code, MCL 380.1169, 380.1506, and 380.1507(6), and section 166a(1) of the School Aid Act, MCL 388.1766a(1), is temporarily suspended for the 2019–2020 school year so as to waive instruction requirements unmet by a district prior to March 11, 2020, except as described in the district's approved CoL Plan.

12. Strict compliance with rules and procedures under sections 1561 and 1577 to 1599 of the School Code, MCL 380.1561 and MCL 380.1577 to 380.1599, is temporarily suspended to the extent necessary to waive all compulsory attendance requirements and enforcement measures for the 2019–2020 school year, consistent with this order and a district's CoL Plan.

13. Strict compliance with rules and procedures under section 1170a(1) of the School Code, MCL 380.1170a(1), is temporarily suspended for the 2019–2020 school year so as to waive psychomotor skills instruction requirements, except as described in the district's approved CoL Plan.

II. CoL Plans (including addenda for early childhood programs)

1. A CoL Plan must include all of the following elements:

   (a) A description of the methods a district will use to provide alternative modes of instruction other than in-person instruction and a summary of materials each pupil and the pupil's parents or guardians will need to meaningfully access the alternative modes of instruction included in the CoL Plan. If the CoL Plan relies on electronic instruction, the CoL Plan must ensure to the extent feasible that pupils have access to a device capable of accessing the electronic instruction and must not penalize a pupil for the pupil's inability to fully participate.

   (b) A description of the methods a district will use to keep pupils at the center of educational activities, including outreach to continue building relationships and maintain connections, and to help pupils feel safe and valued.

   (c) A description of plans to deliver content in multiple ways so that all pupils can access learning.

   (d) A description of plans to manage and monitor learning by pupils.

   (e) A budget outline estimating additional expenditures associated with the CoL Plan and sources of revenue to pay for those expenditures.

   (f) A description of the manner in which district administrators, board members, teachers, and any representatives of teachers collaborated in development of the CoL Plan.

   (g) A description of methods the district will use to notify pupils and parents or guardians of the CoL Plan.

   (h) A best estimate of the date on which the district will begin implementation of the CoL Plan, which must be no later than April 28, 2020.

2. A CoL Plan must do all of the following:

   (a) Provide for assistance, to the extent feasible, to pupils enrolled in any postsecondary dual enrollment courses under the Postsecondary Enrollment Options Act, 1996 PA 160, as amended, MCL 388.511 to 388.524, and the Career and Technical Preparation Act, 2000 PA 258, as amended, MCL 388.1901 to 388.1913, in completing the courses during the 2019–2020 school year.

   (b) Provide or arrange for continuation of food distribution to eligible pupils.

(c) Continue to pay school employees while redeploying staff to provide meaningful work in the context of the CoL Plan, subject to any applicable requirements of a collective bargaining agreement.

(d) Provide for evaluation of participation in the CoL Plan by pupils.

(e) Provide mental health supports to pupils affected by a state of emergency or state of disaster prompted by COVID-19.

(f) Provide for the district to support the efforts of the intermediate district in which the district is located to mobilize disaster relief childcare centers as described in Executive Order 2020-51 or any executive order that may follow it.

(g) Any CoL Plan adopted by an intermediate district pursuant to section II.6 of this order shall include a plan for early childhood services, including Great Start Readiness Program, compliant with the requirements of section II.16 of this order and guidance issued by the Department. For purposes of this section, the Early Childhood Plan may be incorporated in the original CoL Plan submitted for approval or submitted for approval as an amendment or addendum to the district's currently approved CoL Plan.

3. A CoL Plan may provide for the adoption of a balanced calendar instructional program for the remainder of the 2019–2020 school year and planning for the adoption of a balanced calendar instructional program for the 2020–2021 school year.

4. A district may contract with one or more providers for implementation of a CoL Plan.

5. If a district lacks the capacity to implement a CoL 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(4) of the School Code, MCL 380.11a(4), to provide for implementation of a CoL Plan.

6. For a district that is not a public school academy, the district's CoL Plan must be approved by the intermediate superintendent of the intermediate district in which the district is located. For a district that is a public school academy, the district's CoL Plan must be approved by the authorizing body of the public school academy or the authorizing body's designee for the purpose of administering contracts with public school academies. For a public school academy that by agreement provides public educational services for the residents of a district that does not directly provide public educational services to its residents, the public school academy's CoL Plan must be approved by the intermediate superintendent of the intermediate district in which the public school academy is located. If an intermediate district educates K–12 students, the intermediate district may adopt a CoL Plan for

those activities and implement the CoL Plan once adopted. A school of excellence that is a cyber school, as defined in section 551 of the School Code, MCL 380.551, and is in compliance with section 553a of the School Code, MCL 380.553a, may continue to educate pupils under its charter contract which will be that school's CoL Plan.

7. An intermediate district or an authorizing body shall approve a CoL Plan submitted by a district if the CoL Plan complies with the requirements of section II of this order and if the intermediate district or authorizing body believes the CoL Plan represents a good-faith effort to provide adequate alternative modes of instruction given the limitations resulting from the COVID-19 pandemic and accompanying response efforts. Intermediate districts and authorizing bodies must allow for flexibility and presume that a CoL Plan submitted by a district will be implemented to the best of the district's ability.

8. Intermediate districts and authorizing bodies shall transmit copies of approved CoL Plans to the Superintendent and to the State Treasurer. If a district or intermediate district maintains a public internet site, the district or intermediate district shall post its approved CoL Plan on the internet site.

9. An intermediate district may enter into a cooperative agreement with one or more other intermediate districts for the purpose of reviewing and approving CoL Plans under this order.

10. An intermediate district or authorizing body that reviews and approves or disapproves CoL Plans on its own or with others pursuant to section II of this order will be eligible for any additional funding appropriated to support these activities. An intermediate district or authorizing body that does not review and approve or disapprove CoL Plans will not be eligible for any additional funding appropriated.

11. Intermediate districts and authorizing bodies must be prepared to review and approve or reject CoL Plans beginning on April 8, 2020.

12. A district with an approved CoL Plan is eligible to receive continued payments from the State School Aid Fund for the 2019–2020 school year.

13. A district that is not a public school academy may amend its CoL Plan with the approval of the intermediate superintendent of the intermediate district in which the school district is located. A district that is a public school academy may amend its CoL Plan with the approval of its authorizing body or its designee. For a public school academy that by agreement provides public educational services for the residents of a district that does not directly provide public educational services to the residents on its own, the public school academy's CoL Plan may be amended with the approval of the intermediate superintendent of the intermediate district in which the public school academy is located.

14. Decisions regarding the awarding of credit, the issuance of grades, and the use of pass or fail designations will be made at the district level by districts with due recognition of the impact of the COVID-19 pandemic.

15. State-approved nonpublic schools and parents and guardians homeschooling students are encouraged to do all of the following:

    (a) Offer all students electronic, other remote, or home-based instruction, to the extent feasible, for the remainder of the 2019–2020 school year, including course offerings provided by the Michigan Virtual School.

    (b) Coordinate with districts providing nonessential elective courses under section 166b of the School Aid Act, MCL 388.1766b, to any of their students for the remainder of the 2019–2020 school year.

    (c) Assist eligible nonpublic school students to complete postsecondary dual enrollment courses, to the extent feasible, under the Postsecondary Enrollment Options Act, 1996 PA 160, as amended, MCL 388.511 et seq., and the Career and Technical Preparation Act, 2000 PA 258, as amended, MCL 388.1901 et seq.

    (d) Take actions necessary to continue to receive any federal funding previously allocated in a manner consistent with applicable federal law.

16. An intermediate school district that is an approved grantee of Great Start Readiness Program (GSRP) funding under sections 1632d and 1639 of the School Aid Act, MCL 388.1632d and 388.1639, for the 2019–2020 school year shall maintain records of approved subrecipient plans for continuing the GSRP for the remainder of the 2019–2020 school year. The intermediate school district is responsible for ensuring all subrecipients, including community-based providers, create a GSRP plan. Subrecipient plans may be incorporated in the original CoL Plan submitted for approval or may be submitted for approval as an amendment or addendum to the district's currently approved CoL Plan. Plans must include, at a minimum:

    (a) A description of plans to provide and document, at a minimum, how all members of the GSRP teaching team will engage on an ongoing basis with enrolled children and their families, through the most convenient communication method for the family in light of COVID-19-related orders and guidance, and, as appropriate, provide children and their families plans for the transition from GSRP to kindergarten. This outreach must include a virtual conference with the family.

    (b) A description of how GSRP funds and resources will be used to implement a modified program that is developmentally appropriate for the strengths, interests, and needs of each individualized child.

(c) A best estimate of the date on which subrecipients will begin implementation of the GSRP plan, which must be no later than May 7, 2020.

III. District employees permitted in district buildings

1. Notwithstanding the closure of school buildings under Executive Order 2020-11 or any executive order that may follow it, district employees or contractors necessary to conduct minimum basic school operations consistent with a CoL Plan, including those employers or contractors necessary to facilitate alternative modes of instruction, such as distributing materials and equipment, or performing other necessary in-person functions, are permitted to be physically present in district buildings, as determined by district administrators. District employees and contractors performing these functions are considered to be performing necessary government activities for purposes of Executive Order 2020-59 or any executive order that may follow it. Districts must adopt social distancing practices and other mitigation measures to protect district employees and contractors, including all of the following:

   (a) Restricting the number of employees and contractors present in a district building to no more than is strictly necessary to perform the activities authorized by section III of this order.

   (b) Promoting remote work to the fullest extent possible.

   (c) Keeping employees and contractors in a district building at least six feet from one another to the maximum extent possible.

   (d) Increasing standards of district building cleaning and disinfection to limit employee and contractor exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in a district building.

   (e) Adopting policies to prevent employees and contractors from entering the premises if they display respiratory symptoms or have had contact with a person who is known or suspected to have contracted COVID-19.

   (f) Any other social distancing practices and mitigation measures relating to COVID-19 recommended by the Centers for Disease Control and Prevention.

2. A district may permit parents and guardians of pupils to visit school property for the purpose of obtaining materials and equipment pursuant to a CoL Plan and using the same social distancing and other mitigation measures required for district employees and contractors under section III.1 of this order. Parents or guardians leaving their homes or residences for this purpose are considered to be obtaining necessary services or supplies for purposes of Executive Order 2020-59 or any executive order that may follow it.

3. Any childcare workers at a childcare located within a district building (including workers at disaster relief childcare centers), are permitted to be physically present in district buildings, as determined by district administrators and to the extent permitted by Executive Order 2020-59 or any executive order that may follow it.

IV. Assessments

1. CoL Plans are not required to address the following provisions of the Elementary and Secondary Education Act of 1965 ("ESEA") that have been waived by the United States Department of Education for the 2019–2020 school year pursuant to section 8401(b) of the ESEA, 20 USC 7861(b):

   (a) Assessment requirements under section 1111(b)(2) of the ESEA, 20 USC 6311(b)(2).

   (b) Report card provisions related to certain assessments and accountability in section 1111(h) of the ESEA, 20 USC 6311(h) based on data from the 2019–2020 school year, including all of the following:

      (1) Section 1111(h)(1)(C)(i) of the ESEA, 20 USC 6311(h)(1)(C)(i) (accountability system description).

      (2) Section 1111(h)(1)(C)(ii) of the ESEA, 20 USC 6311(h)(1)(C)(ii) (assessment results).

      (3) Section 1111(h)(1)(C)(iii)(I) of the ESEA, 20 USC 6311(h)(1)(C)(iii)(I) (other academic indicator results).

      (4) Section 1111(h)(1)(C)(iv) of the ESEA, 20 USC 6311(h)(1)(C)(iv) (English language proficiency assessment results).

      (5) Section 1111(h)(1)(C)(v) of the ESEA, 20 USC 6311(h)(1)(C)(v) (school quality or student success indicator results).

      (6) Section 1111(h)(1)(C)(vi) of the ESEA, 20 USC 6311(h)(1)(C)(vi) (progress toward meeting long-terms goals and measurements of interim progress).

      (7) Section 1111(h)(1)(C)(vii) of the ESEA, 20 USC 6311(h)(1)(C)(vii) (percentage of students assessed and not assessed).

      (8) Section 1111(h)(1)(C)(xi) of the ESEA, 20 USC 6311(h)(1)(C)(xi), (number and percentage of students with the most significant cognitive disabilities taking an alternate assessment).

      (9) Section 1111(h)(2) of the ESEA, 20 USC 6311(h)(2), with respect to all waived requirements in section 1111(h)(1)(C) of ESEA, 20 USC 6311(h)(1)(C).

(10)Section 1111(h)(2)(C)(i) and (ii) of the ESEA, 20 USC 6311(h)(2)(C)(i) and (ii) (information showing how students in a local educational agency ("LEA") and each school, respectively, achieved on the academic assessments compared to students in Michigan and the LEA).

2. Strict compliance with rules and procedures under section 1279g of the School Code, MCL 380.1279g, and section 104b of the School Aid Act, MCL 388.1704b, requiring a district to administer during the 2019–2020 school year the Michigan Merit Examination to pupils in grade 11 and to pupils in grade 12 who did not take the complete Michigan Merit Examination in grade 11, is temporarily suspended for the remainder of the 2019–20 school year. Pupils currently in grade 11 will be administered the Scholastic Aptitude Test portion of the Michigan Merit Examination during the school day in the fall of the 2020–21 school year as permitted by the College Board, with results from this test being used for college entrance purposes but not for school accountability purposes.

3. Strict compliance with rules and procedures under sections 503(6)(a), 523(2)(a), 553(5)(a), and 1311e(5)(a) of the School Code, MCL 380.503(6)(a), 380.523(2)(a), 380.553(5)(a), and 380.1311e(5)(a), and under section 104c of the School Aid Act, MCL 388.1704c, is temporarily suspended so as to suspend for the remainder of the 2019–2020 school year the obligation of a district to administer the state assessments described in those sections, including the Michigan Student Test of Educational Progress ("M-STEP"), or an alternative to M-STEP such as the MI-ACCESS assessment, or other assessment taken in conjunction with the M-STEP, including the Preliminary Scholastic Aptitude Test ("PSAT") developed by the College Board. Pupils otherwise scheduled to be administered the PSAT during the school day in the 2019–2020 school year will be administered the PSAT during the school day in the fall of the 2020–2021 school year as permitted by the College Board.

4. Strict compliance with rules and procedures under section 41 of the School Aid Act, MCL 388.1641, is temporarily suspended so as to suspend for the remainder of the 2019–2020 school year the obligation of a district to administer to English language learners the English language proficiency assessment known as the "WIDA ACCESS for English language learners" or the "WIDA Alternative ACCESS."

5. Strict compliance with rules and procedures under section 1279g of the School Code, MCL 380.1279g, is temporarily suspended so as to suspend for the remainder of the 2019–2020 school year the obligation of a district, imposed by the Department or otherwise, to administer an assessment that assesses a pupil's ability to apply reading and mathematics skills in a manner that is intended to allow employers to use the results in making employment decisions, including the WorkKeys assessment.

6. Strict compliance with rules and procedures under section 104 of the School Aid Act, MCL 388.1704, is temporarily suspended to the extent necessary to suspend any requirement for a district to administer the Maryland-Ohio observational tool during the 2019–2020 school year, which is also referred to as the Kindergarten Readiness Assessment.

7. Pupils enrolled in advanced placement courses and eligible to take examinations for advanced placement courses administered by the College Board must be permitted to take the examinations using the at-home testing option provided by the College Board. Districts shall facilitate, to the extent feasible, access to information relating to advanced placement courses and course schedules provided online by the College Board. For pupils without access to the internet or a device necessary to access the internet, districts shall facilitate, to the extent feasible, access to information regarding assistance provided by the College Board in completing examination requirements. Information relating to advanced placement courses and examinations is available at: apstudents.collegeboard.org/coronavirus-updates.

8. Strict compliance with rules and procedures under section 1249, 1249a, 1249b, and 1250(1) of the School Code, MCL 380.1249, 380.1249a, 380.1249b, and 380.1250(1), under section 38.93 of the Teachers' Tenure Act, MCL 38.93, and under section 104 of the School Aid Act, MCL 388.1704, is temporarily suspended to the extent necessary to waive any requirement for assessments or other performance evaluations of teachers not on an individual development plan on March 13, 2020 and district administrators during the 2019–2020 school year.

9. Strict compliance with rules and procedures under subsections (1), (3) and (4) of section 1250 of the School Code, MCL 380.1250(1), (3) and (4), is temporarily suspended for the remainder of the 2019–20 school year.

10. Any teacher who has an individualized development plan, pursuant to section 38.83a or section 38.93 of the Teachers' Tenure Act, MCL 38.83a, 38.93, shall be provided an annual year-end performance evaluation by the employing school district.

    (a) Except as provided in section IV.12 of this order, a teacher's annual year-end performance evaluation shall be determined based on the teacher's performance at least through March 13, 2020, consistent with section 1249 of the School Code, MCL 380.1249, and sections 38.83a and 38.93 of the Teachers' Tenure Act, MCL 38.83a and 38.93, as affected by this and other orders.

    (b) Except as provided in section IV.12 of this order, a teacher's annual year-end performance evaluation may account for the teacher's performance after March 13, 2020 through the end of the 2019–2020 school year, consistent with section 1249 of the School Code, MCL 380.1249, and

sections 38.83a and 38.93 of the Teachers' Tenure Act, MCL 38.83a and 38.93, as affected by this and other orders, including efforts made by the teacher to prepare and provide remote student instruction given the limitations resulting from the COVID-19 pandemic and accompanying response efforts.

11. Strict compliance with rules and procedures under sections 38.83a, 38.83b, and 38.93 of the Teachers' Tenure Act, MCL 38.83a, 38.83b, and 38.93, and section 1249 of the School Code, MCL 380.1249, is temporarily suspended such that annual year-end performance evaluations under section IV.10 of this order shall give no consideration to criteria requiring data or other information unavailable because a school district, student, teacher, or administrator acts in conformance with this executive order or other orders or response efforts prompted by the COVID-19 state of emergency and/or state of disaster.

12. Strict compliance with rules and procedures under sections 38.83a, 38.83b, and 38.93 of the Teachers' Tenure Act, MCL 38.83a, 38.83b, and 38.93, and under section 1249 of the School Code, MCL 380.1249, is temporarily suspended to the extent necessary to allow a teacher rated as highly effective or effective on their annual year-end performance evaluation for the 2019–2020 school year under sections IV.10 and IV.11 of this order to accrue time toward completing the teacher's probationary period under Article II, sections 38.81 through 38.84, of the Teachers' Tenure Act, MCL 38.81 through MCL 38.84.

13. Strict compliance with rules and procedures under sections 38.83a, 38.83b, and 38.93 of the Teachers' Tenure Act, MCL 38.83a, 38.83b, and 38.93, and under section 1249 of the School Code, MCL 380.1249, is temporarily suspended so as to allow a teacher rated as highly effective or effective on their annual year-end performance evaluation for the 2019–2020 school year under sections IV.10 and IV.11 of this order to maintain continuing tenure under Article III, sections 38.91 through 38.93, of the Teachers' Tenure Act, MCL 38.91 through MCL 38.93.

14. Strict compliance with the rules and procedures under section 38.93 of the Teachers' Tenure Act, MCL 38.93, is temporarily suspended as follows:

    (a) Time periods specified for a teacher on continuing tenure to make progress toward individual development plan goals, as required by section 38.93 of the Teachers' Tenure Act, MCL 38.93, may be extended to allow the teacher sufficient time to make progress toward goals based on criteria requiring data or other information unavailable because a school district, student, teacher, or administrator acts in conformance with this executive order or other orders or response efforts prompted by the COVID-19 state of emergency and/or state of disaster.

    (b) An individual development plan goal based on criteria requiring data or other information that is unavailable because of the COVID-19 crisis,

including but not limited to a school district, student, teacher, or administrator acting in conformance with this executive order or other orders or response efforts prompted by the COVID-19 state of emergency and/or state of disaster, may be waived.

15. Nothing in this order prohibits an employing school district from completing an annual year-end performance evaluation for the 2019–2020 school year for a teacher on continuing tenure who has not been provided with an individualized development plan. Should the district complete an annual year-end performance evaluation for the 2019–2020 school year for a teacher on continuing tenure who has not been provided with an individualized development plan, the district shall comply with sections IV.10 and IV.11 of this order.

V. Pupils in grade 12

1. A district shall implement a process to issue grades to pupils in grade 12, award credits needed for graduation, provide for completion of the Michigan Merit Curriculum, issue diplomas to pupils in grade 12, and reflect continued learning by pupils in grade 12 pursuant to this order. When implementing this section, a district may, without limitation, use one or more of the following options:

   (a) Award credits and grades for courses taken based on coursework through March 11, 2020.

   (b) Provide an optional final exam or other culminating activity to test pupil understanding of the subject matter of a course to the extent practicable.

   (c) Implement a process for pupils in grade 12 to be certified as eligible to graduate using a prior learning assessment, a portfolio, or a resume approach.

   (d) Offer an interdisciplinary culminating activity that encompasses essential standards missed by pupils due to the closure of schools.

2. Districts must provide a pupil in grade 12 who was failing a course as of March 11, 2020 an opportunity to the extent feasible to demonstrate learning in the subject matter of the course and receive credit for the course, as determined by the district.

3. Strict compliance with rules and procedures under section 1166(2) of the School Code, MCL 380.1166(2), is temporarily suspended for the remainder of the 2019–2020 school year so as to suspend the restriction on a high school from issuing a diploma to a pupil who has not completed a one-semester course of study of five periods per week in civics.

4. If before March 11, 2020, a district was providing a nonessential elective course to a nonpublic school pupil or homeschool pupil in grade 12 at either a

district, intermediate district, or nonpublic school site pursuant to section 166b of the School Aid Act, MCL 388.1766b, and that course is required for the pupil to graduate and receive a diploma, the district must, to the extent feasible, continue to offer the nonessential elective course to the pupil through alternative modes of instruction for the remainder of the 2019–2020 school year.

VI. Special education

1. Districts shall strive in good faith and to the extent practicable, based upon existing resources, technology, training, and curriculum, as well as the circumstances presented by any state of emergency or state of disaster, to provide equal access to alternative modes of instruction to students with disabilities for the remainder of the 2019–2020 school year from birth through age 26. This includes the provision of auxiliary services under section 1296 of the School Code, MCL 380.1296.

2. While either the COVID-19 states of emergency or disaster, or both, continue, districts shall comply with guidance from the United States Department of Education ("USDOE"), including its Office of Civil Rights and Office of Special Education and Rehabilitative Services, and the Department concerning the delivery of alternative modes of instruction to students with disabilities in light of the impact of COVID-19.

3. Districts shall, to the extent practicable and necessary, make individualized determinations whether and to what extent compensatory services may be needed for pupils after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends.

4. A district or a nonpublic school that has been allocated federal funds for the 2019–2020 school year for the purpose of providing special education services shall not be penalized or required to repay the funds by this state due to the inability to provide those services in person during the 2019–2020 school year after March 11, 2020.

5. Within five days of the effective date of this order, the Department and the Department of Civil Rights are strongly encouraged to submit requests for interpretation, guidance on implementation, flexibility, or waivers to USDOE that would permit districts and nonpublic schools to do one or more of the following during the remainder of the 2019–2020 school year:

   (a) Deliver instruction to all pupils, including students with disabilities, without having to reconvene or amend individualized education plans ("IEPs") or Section 504 plans.

   (b) Deliver direct and consultative related services such as therapies, including occupational therapy, physical therapy, speech language pathologist, social service worker, teacher consultant, and other special

education services and supports, without having to reconvene or amend IEPs or Section 504 plans.

(c) Complete IEPs and Section 504 plans online, either by telephone conference or video conference, if the parents or guardians involved have access to the technology and agree to the alternative means of participation. If a parent or guardian elects not to participate in an otherwise due IEP online, a district should be permitted to extend the deadline for completion of the IEP for up to 30 school days after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends.

(d) Complete annual or otherwise due IEPs online, either by telephone conference or video conference, with those IEPs being considered timely if they are completed by the end of the 2019–2020 school year.

(e) Consider whether a pupil should be provided compensatory education for pupils after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends, based on applicable law and guidance, no later than the first annual IEP meeting of the 2020–2021 school year.

(f) Consider compensatory education for pupils who are more likely to qualify for compensatory education through IEP amendments, with the authority to complete those IEP amendments online, either by telephone conference, virtual meetings, or other existing technology.

(g) Other requests the Department deems necessary to facilitate the delivery of alternative modes of instruction with equal access.

6. This order does not require that an IEP be amended.

VII. Temporary suspension of certain requirements relating to the suspension of administrative rules by the Superintendent

1. Strict compliance with rules and procedures under section 1281(3) of the School Code, MCL 380.1281(3), is temporarily suspended so as to suspend for the remainder of the 2019–2020 school year the requirement that a district, university school, or intermediate district apply for a limited time waiver from a Department rule interpreting or implementing a provision of the School Code and so as permit the Superintendent to temporarily suspend a Department rule interpreting or implementing a provision of the Code to facilitate the implementation of this order or other orders or response efforts prompted by the COVID-19 state of emergency and/or state of disaster.

2. The Superintendent may not grant a waiver from the duty to comply with a provision of the School Code and may not grant a waiver from the duty to

comply with another state statute unless and to the extent that a waiver is specifically allowed by that other state statute.

VIII. Temporary suspension of certain certification and continuing learning requirements

1. Strict compliance with rules and procedures under section 1531(2) of the School Code, MCL 380.1531(2), is temporarily suspended so as to permit the Superintendent to issue a temporary one-year teaching certificate to an otherwise qualified individual who is unable to take an appropriate subject area examination required by MCL 380.1531(2) due to COVID-19 or accompanying response efforts.

2. Strict compliance with rules and procedures under section 1531(3) of the School Code, MCL 380.1531(3), is temporarily suspended so as to permit the Superintendent to issue a temporary one-year teaching certificate to an individual holding a teaching certificate from another state or a teaching degree from an out-of-state teacher preparation institution who applies for a Michigan teaching certificate, is otherwise qualified, but is unable to take an appropriate subject area examination required by MCL 380.1531(3) because the examination is not offered due to COVID-19 or accompanying response efforts.

3. Strict compliance with rules and procedures under section 1531d of the School Code, MCL 380.1531d, is temporarily suspended so as to permit the Superintendent to temporarily waive the requirement that a person seeking a teaching certificate successfully complete a course approved by the Department in first aid and cardiopulmonary resuscitation and instruction approved by the Department in foreign body airway obstruction management when the person is unable to complete the course and/or the instruction because the course and/or the instruction is not offered due to COVID-19 or accompanying response efforts.

4. Strict compliance with rules and procedures under section 1531i(2)(c) of the School Code, MCL 380.1531i(2)(c), is temporarily suspended so as to permit the Superintendent to issue an interim teaching certificate to an otherwise qualified individual who is unable to take an appropriate subject area examination required by MCL 380.1531i(2)(c) because the examination is not offered due to COVID-19 or accompanying response efforts.

5. Strict compliance with rules and procedures under Rule 390.1130(6) and (7) of the Michigan Administrative Code is temporarily suspended so as to permit the Superintendent to extend the duration of a 1-year temporary teacher employment authorization by an additional year if the holder of the 1-year temporary teacher employment authorization is unable to complete the requirements to obtain a Michigan teaching certificate because the requirements cannot be satisfied due to COVID-19 or accompanying response efforts.

6. Strict compliance with rules and procedures under section 1526 of the School Code, MCL 380.1526, is temporarily suspended so as to waive for any teacher within his or her third year of employment the requirement that the teacher receive at least 15 days of professional development within the teacher's first three years of employment if the requirement could not be completed due to COVID-19 or accompanying response efforts.

7. Strict compliance with rules and procedures under section 1527(1) of the School Code, MCL 380.1527(1), is temporarily suspended so as to waive the requirement for the 2019–2020 school year that a district or intermediate district provide at least five days of teacher professional development each year.

8. Strict compliance with rules and procedures under section 1233(6) of the School Code, MCL 380.1233(6), is temporarily suspended so as to permit the Department to renew an individual's school counselor credential regardless of whether the individual has completed at least 25 hours of professional development approved by the Department under MCL 380.1233(8) covering counseling about the college preparation and selection process and at least 25 hours of professional development approved by the Department under MCL 380.1233(8) covering career counseling.

9. Strict compliance with rules and procedures under Rules 1137(1)(c), 1138(3), 1142(2)(d)(i), and 1142(3)(d) of the Teacher Certification Code, Mich. Admin. Code R 390.1137(1)(c), 1138(3), 1142(2)(d)(i), and 1142(3)(d), is temporarily suspended to the extent necessary to permit the Department to renew an individual's teaching certificate or permit between now and the end of the individual's certificate or period permit regardless of whether the individual has received an annual year-end evaluation for the 2019–2020 school year.

IX. Implementation

1. Strict compliance with rules and procedures under section 21f of the School Aid Act, MCL 388.1621f, is temporarily suspended to the extent necessary to permit a district pursuant to an approved CoL Plan to enroll a pupil in more than two virtual courses, regardless of whether the virtual course is published in a catalog of courses or a parent or guardian approves, and so as to suspend any requirement to comply with minimum requirements to count a pupil in membership established by the pupil accounting manual.

2. Strict compliance with rules and procedures under section 1278a(4) of the School Code, MCL 380.1278a(4), is temporarily suspended to the extent necessary to permit a district to determine a pupil has completed a credit without using subject area content expectations or guidelines developed by the Department.

3. Strict compliance with rules and procedures under section 1280f(5) of the School Code, MCL 380.1280f(5), is temporarily suspended so as to relieve a

district of the obligations imposed by that provision for the remainder of the 2019–2020 school year, including the obligation to retain a pupil in grade 3.

4. Strict compliance with rules and procedures under sections 162 and 163 of the School Aid Act, MCL 388.1762 and 388.1763, is temporarily suspended so as to prevent the forfeiture of funds resulting from the implementation of this order.

5. 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. Strict compliance with rules and procedures under sections 1284a and 1284b of the School Code, MCL 380 1284a and 380.1284b, is temporarily suspended so as to permit a district to adopt year-round school, a year-round program, or an early start for the 2020–2021 school year. Adoption of measures provided in this section may be included by a district as part of the district's CoL Plan.

6. Mandatory 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.

7. 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.

8. Before the Department, the Superintendent, or the Department of Civil Rights seeks any guidance, issues a waiver, seeks a waiver relating to this order, or suspends an administrative rule pursuant to this order, the Superintendent or the director of the Department of Civil Rights, as applicable, shall provide the governor in writing with a copy of the request or waiver and information relating to the request, waiver, or suspension, as required by section 8 of article 5 of the Michigan Constitution of 1963.

9. To ensure management of district and intermediate district affairs and property in ways that will assist the response to the COVID-19 states of emergency and disaster, districts and intermediate districts are authorized and encouraged to donate medical personal protective equipment and supplies to healthcare providers and other necessary personnel engaged in response efforts to COVID-19.

10. This order is effective immediately and continues through the end of the states of emergency and disaster declared in Executive Order 2020-33 or any other state of emergency or disaster declared in response to COVID-19 during the remainder of the 2019–2020 school year, with the exception of the provisions of this order relating to scheduling for the 2020–2021 school year, which will continue into the 2020–2021 school year for that purpose.

11. Executive Order 2020-35 is rescinded.

X. Definitions

As used in this order:

1. "Alternative modes of instruction" means modes of pupil 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.

2. "Center" means the Center for Educational Performance and Information referenced in section 94a of the School Aid Act, MCL 388.1694a.

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

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

5. "Intermediate superintendent" means the superintendent of an intermediate district.

6. "Membership" means that term as defined in section 6(4) of the School Aid Act, MCL 388.1606(4).

7. "Michigan Virtual School" means the Michigan Virtual School referenced in section 98 of the School Aid Act, MCL 388.1698.

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

9. "Pupil" means that term as defined in section 6(6) of the School Aid Act, MCL 388.1606(6).

10. "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.

GRETCHEN WHITMER
GOVERNOR

Date: April 30, 2020

Time: 7:20 pm

By the Governor:

SECRETARY OF STATE