CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #85 Pursuant to Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, and 2021-02

An order amending and restating Emergency Order #64 (Temporary Remote Instruction and Support and Hybrid Instruction for K-12 School Districts)

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, An order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, Emergency Order #1, extended by Emergency Orders #19 and #32, required all New Hampshire K-12 public school districts to transition to temporary remote instruction and support for the duration of the 2019-2020 school year; and

WHEREAS, in a report to Congress dated April 27, 2020, the US Department of Education indicated that it would not request waiver authority for any of the core tenets of the IDEA or Section 504 of the Rehabilitation Act of 1973, most notably a free appropriate public education (F APE) in the least restrictive environment (LRE); and

WHEREAS, the New Hampshire Department of Education has issued, and the Governor reaffirmed, K-12 Back-to-School Guidance that set forth mitigation strategies to assist school districts in safely re-opening schools for the 2020-2021 school year (the "DOE Back to School Guidance"); and

WHEREAS, on August 13, 2020, the Governor issued Emergency Order #64, which permitted, but did not require, K-12 school districts to utilize in-person instruction, distance learning, or hybrid instruction based on the decisions of each school district; and

WHEREAS, on Janaury 26, 2021, the Division of Public Health Services released a document titled "Considerations for Transitioning Between School Instructional Models Based on Level of

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Community Covid-19 Transmission and Impact on Local Schools" (the "DPHS January Guidance"); and

WHEREAS, according to the DPHS January Guidance, hundreds of potential exposures that have occurred in K-12 school settings have resulted in little or no identified transmission; and

WHEREAS, as noted by the DPHS January Guidance, multiple studies show that K-12 schools are at low risk for spreading Covid-19[1]; and

WHEREAS, with the increased distribution of COVID-19 vaccine to New Hampshire residents and corresponding decline in community transmission, the State is in a position to ensure the provision of some in person instruction for all students who elect such an option; and

WHEREAS, parents, educators, medical professionals, and all other relevant stakeholders agree that in person instruction is necessary to ensure the mental health and education of New Hampshire's children.

Now therefore, pursuant to Section 18 of Executive Order 2020-04, as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, 2020-21, 2020-23, 2020-24, 2020-25, 2021-01, and 2021-02, Emergency Order 64 is hereby amended and restated to read as follows:

1. The provisions of Emergency Order #7 shall remain in full force and effect for the duration of the State of Emergency declared in Executive Order 2020-04.

2. School districts are required adhere to all state and federal special education law requirements, including without limitation the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, in the delivery of instruction and support services pursuant to any offered instructional model, including without limitation, traditional instruction, distance learning, and hybrid models, consistent with US Department of Education Guidance. In fulfilling their obligations pursuant to Ed 1100, et seq., school districts who have selected a hybrid instructional model for their general education population that includes remote instruction shall not exclude in-person services from consideration for students with disabilities. In-person services should be provided if such services are necessitated by the student's individualized

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[1] A.) Zimmerman KO, et al. Incidence of secondary transmission of SARS-CoV-2 infections in schools. Pediatrics, Jan 2021. Prepublication available at: https://pediatrics.aappublications.org/content/early/2021/01/06/peds.2020-048090

B.) Brandal LT, et al. Minimal transmission of SARS-CoV-2 from paediatric COVID-19 cases in primary schools, Norway, August to November 2020. Euro Surveill, Jan 2021;26(1). Available online at: https://www.eurosurveillance.org/content/10.2807/15607917.ES.2020.26.1.2002011?emailalert=true

C.) Falk A, et al. COVID-19 cases and transmission in 17 K-12 schools – Wood County, Wisconsin, August 31 – November 20, 2020. MMWR Morb Mortal Wkly Rep, Jan 2021;70. Available online at: https://www.cdc.gov/mmwr/volumes/70/wr/mm7004e3.htm?s_cid=mm7004e3_

D.) Leidman E, et al. COVID-19 trends among persons aged 0-24 years – United States, March 1 – December 12, 2020. MMWR Morb Mortal Wkly Rep, Jan 2021;70(3):88-94. Available online at: https://www.cdc.gov/mmwr/volumes/70/wr/mm7003e1.htm?s_cid=mm7003e1_w

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needs and consistent with the health and safety needs of the child, child's teachers, and child's family.

3. Pursuant to Emergency Rule Ed 306.22 and 405.03, enacted as Exhibit P to Emergency Order #29, New Hampshire schools retain the flexibility to provide traditional in-person instruction or hybrid instruction that encompasses aspects of both in-person and distance learning in order to respond to COVID-19 threats in their individual communities. New Hampshire schools shall retain the option to offer full time distance learning for any student who elects such an option. However, all New Hampshire schools must provide in person instruction for at least two days per week for any student who wishes to elect such an option, unless a school elects to transition to full time distance learning for all students or a segment of students pursuant to the provisions of paragraph 4 of this Order. In addition to the minimum requirement to offer an in persion option for up to two days per week, it is expected that schools will operate using in-person instruction to the extent possible based on the factors set forth in the DOE Back to School Guidance and the DPHS January Guidance. Further, notwithstanding the options that schools may elect pursuant to the flexibility provided by the provisions of this Order and Emergency Rules Ed 306.22 and 405.03, each school must take any and all necessary steps to meet its obligation to provide a free and appropriate education to each of its students.

4. A K-12 school may only elect to operate under a full time distance learning model for all students or a segment of students and suspend the required option for at least two days per week of in person instruction as follows:

a) A K-12 school may transition to required full time distance learning for all students or a segment of students for up to 48 hours without approval if such a transition is necessary to assess concerns related to COVID-19 infections, staffing shortages related to COVID-19 infections, or another unexpected event or series of events related to COVID-19.
b) A K-12 school may transition to required full time distance learning for all students or a segment of students for longer than 48 hours if (i) such a transition is necessary due to COVID-19 infections, staffing shortages related to COVID-19 infections, or another unexpected event or series of events related to COVID-19 and (ii) the school receives approval for such a transition from the Commissioner of Education, who shall consider any request for such approval in consultation with the Division of Public Health Services.

5. RSA 189:39-b, V and Ed Rule 504.04(f) are suspended for the duration of the State of Emergency declared in Executive Order 2020-04. A school board, in consultation with the superintendent, may offer a One-Year Certificate of Eligibility to an individual in accordance with the provisions of RSA 189:39-b, I-IV without regard to whether the individual has previously received a One-Year Certificate of Eligibility. Any One-Year Certificate of Eligibility issued by the NH Department of Education pursuant to this paragraph 5 shall be effective for one calendar year from the date of issuance.

6. Nothing in this Order shall be construed to impact the operation of Virtual Learning Academy Charter Schools.

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7. This Order shall take effect on March 8, 2021.

Given under my hand and seal at the Executive Chambers in Concord, this 19th day of February, in the year of Our Lord, two thousand and twenty-one, and the independence of the United States of America, two hundred and forty-five.

Chris Sununu

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