STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-19

Authorizing and Directing the Commissioner of Education to Implement a Distance Learning Period and Continue to Provide a Safe Learning Environment for Minnesota's Students

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Minnesota has taken proactive steps to ensure that we are ahead of the curve on COVID-19 prevention and response. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. In Executive Order 20-01, I directed all state agencies to submit proposed orders and rules to protect and preserve public health and safety.

In Minnesota Statutes 2019, section 12.02, subdivision 1, the Minnesota Legislature recognized the "existing and increasing possibility of the occurrence of natural and other disasters of major size and destructiveness" and conferred upon the Governor the emergency and disaster powers provided in Chapter 12 to "ensure the preparations of this state will be adequate to deal with disasters" to "generally protect the public peace, health, and safety" and to "preserve the lives and property of the people of the state."

Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 1, the Governor has general authority to control the state's emergency management as well as carry out the provisions of Minnesota's Emergency Management Act. Pursuant to subdivision 3 of the same section, the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions" of Minnesota Statutes 2019, Chapter 12. Furthermore, under Minnesota Statutes 2019, section 12.21, subdivision 3, the Governor is permitted to authorize the Commissioner of the Minnesota Department of Education ("MDE") "to alter school schedules, curtail school activities, or order schools closed." When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the pendency of a peacetime emergency. Any inconsistent rules or ordinances of any agency or political subdivision of the state are suspended during the pendency of the emergency.

On March 15, 2020, I issued Executive Order 20-02, which directed schools to close to students and engage in a planning period from March 18, 2020 until March 27, 2020 ("Closure Period"). During this Closure Period, school and district staff were directed to report to work to construct continuity of education plans that would be delivered via distance learning or social distancing models compliant with Minnesota Department of Health guidance ("MDH Guidance"). In order to continue providing education for Minnesotan children while preserving the health, safety, and lives of Minnesotans, I am directing all public schools to implement distance learning plans, continue providing student meals, and provide onsite care to school-aged children of certain workers in Critical Sectors exempted under Executive Order 20-20 ("Eligible Children").

We continue to recognize that schools are community hubs for children and families. School closures put burdens on children and families and disproportionately impact different communities. I greatly value the efforts of school staff to make sure that our students receive meals on a daily basis and to provide other services such as physical and mental health care supports virtually where possible. These services must continue.

On March 20, 2020, the U.S. Secretary of Education announced that students impacted by school closures due to the COVID-19 pandemic can bypass standardized statewide assessments for the 2019-20 school year. The U.S. Department of Education has made a waiver process available to any state that is unable to assess its students due to the ongoing national emergency, providing relief from federally mandated assessment requirements for this school year.

Student performance, as measured by statewide assessments, is required to be reported and used in federal and state accountability and reporting systems. Consistent with the current federal waiver opportunity and to protect students' health and safety, Minnesota is cancelling its statewide assessments for the remainder of the 2019-20 school year. Minnesota has therefore submitted a request for a waiver of federal assessment requirements. Due to the national emergency, Minnesota's federal waiver request also includes a waiver from the federal reporting requirements and the requirement that this assessment data be used in the accountability systems. Action must also be taken to provide relief from state accountability and reporting requirements.

Minnesotans rely on the care and services provided to children and families of Critical Sector workers as we navigate the COVID-19 pandemic and take care of one another. Educators, school employees providing care, and child care providers are themselves Critical Sector workers. Child care services will continue to be necessary for the essential functions of health care services, law enforcement, emergency response services, and other Critical Sectors.

This peacetime emergency brings increased attention to the foundation child care providers provide for the health and the well-being of our state. The care that they provide children and families plays a critical role in our communities as we persevere through this pandemic. However, the health and the wellbeing of our children and their families is the top priority of the State and should a child care provider determine it cannot maintain public health guidance and safely meet the needs of children and staff, it should close. Educators and child care providers are the heroes we need to ensure that children are safe, allowing parents and guardians to provide critical care and emergency services to our communities.

For these reasons, I order as follows:

1. Nothing in this Executive Order should be construed to encourage or require Minnesotans in at-risk categories to act inconsistently with public health recommendations or the advice of their doctors. All Minnesotans should continue to regularly check and follow the advice on MDH's COVID-19 webpage: https://www.health.state.mn.us/diseases/coronavirus/

2. As planned, the closure period announced in Executive Order 20-02 will remain in place through March 27, 2020 ("Closure Period").

3. Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 3(11), I authorize and direct the Commissioner of Education to implement a distance learning period beginning on March 30, 2020 through May 4, 2020 ("Distance Learning Period").

4. The purpose of the Distance Learning Period is to provide continuity of education during the COVID-19 pandemic while also preserving the health, safety, and lives of Minnesota's students, educators, and the broader public.

5. During the Distance Learning Period, public school buildings and facilities must be closed for typical in-school instruction.

6. During the Distance Learning Period, all public schools must provide continuous education based on the distance learning plans developed during the Closure Period directed by Executive Order 20-02.

7. I authorize the Commissioner of Education, in consultation with the Commissioner of Health, to extend the Distance Learning Period for the remainder of the 2019-20 school year calendar if it is deemed necessary for the health and safety of students and staff.

8. This order applies to all schools as set forth in Minnesota Statutes 2019, section 12.12, subdivision 3(11). I continue to encourage tribal and nonpublic schools to fulfill the spirit and directives of this Executive Order.

9. During the Distance Learning Period and per applicable labor agreements, school districts and schools must allow for remote work or telework to the extent possible. To the extent that it is necessary for teachers and staff to be physically present in school buildings, school districts and schools must provide conditions for staff in compliance with MDH Guidance on social distancing.

10. Consistent with applicable labor agreements, districts must utilize available staff who are able to work during the Distance Learning Period. Districts must also provide employee accommodations as required by law.

11. For purposes of Minnesota Statutes 2019, section 126C.05, for the period from March 30 through April 30, 2020, schools may count the number of days originally scheduled as instructional days. Additionally, students participating in distance

learning may be reported in attendance and membership for their originally scheduled days and hours.

12. Staff will report to their respective school buildings on Friday, May 1, 2020, to plan and prepare for students' return to school buildings upon the end of the Distance Learning Period.

13. Upon approval by the Executive Council, for purposes of Minnesota Statutes 2019, section 126C.05, districts and schools may count May 1, 2020 and May 4, 2020 as instructional days, and enrolled students can be reported in attendance and membership.

14. Upon approval by the Executive Council, expenses for special education staff assigned to other work during the Closure Period and Distance Learning Period and expenses recorded in the food service fund may be charged to the same Uniform Financial Accounting and Reporting Standards codes to which the service is charged for an instructional day. The Commissioner of Education must notify school districts and charter schools of these formula changes as soon as practicable.

15. Subject to paragraph 1, schools and school districts, in cooperation with state agencies, are directed to support communities disproportionately impacted by the Closure Period and Distance Learning Period, including but not limited to, low-income families and families experiencing homelessness. During the Distance Learning Period, schools are expected to provide meals to their students. MDE will provide additional guidance to schools and school districts about this provision.

16. I direct state agencies to continue to work together to ensure continuity of mental health services to children and their families.

17. I direct MDE and MDH to continue to provide guidance throughout the Distance Learning Period to schools on best practices around distance learning and social distancing protocol.

18. During the Distance Learning Period, schools are directed to provide care, at a minimum, to district-enrolled students aged 12 and under who are Eligible Children. In providing this care, schools must practice hygiene and social distancing best practices. Schools are not required to provide this care during previously scheduled breaks reflected on a school-board approved calendar. I encourage schools and school districts to also provide extended care—before and after school hours—to Eligible Children. MDE will provide further guidance to schools, school districts, and the public about this provision.

19. Employers assigning employees to supervise and care for Eligible Children must ensure compliance with Minnesota Department of Labor and Industry regulations, and MDH Guidance regarding Schools and Child Care: Coronavirus Disease 2019 (COVID-19).

20. In the event that a school location is unable to provide adequate staffing for the care and supervision of Eligible Children due to high staff absenteeism due to illness or other reasons, they must review MDE guidance and contact MDE for further guidance on contracting with local child care providers.

21. Upon approval by the Executive Council, school districts and schools are authorized to transfer operating funds from certain programs that are not already assigned to or encumbered by staff salary and benefits, or otherwise encumbered by federal law, for the following purposes:

    a. To provide care to Eligible Children during the school day.

    b. To pay additional transportation costs incurred between March 30, 2020 and April 30, 2020 needed to implement this Executive Order in providing distance learning instruction.

    c. A fund transfer is allowed if the transfer does not increase state aid obligations to the district or result in additional property tax authority for the district. A transfer is limited to the operating funds of a district. A school board must approve a fund transfer by the fiscal year reporting deadline. A district or school must maintain accounting records for the purpose of this Executive Order that are sufficient to document both the specific funds transferred and use of those funds. Such accounting records are subject to auditor review. Any execution of this flexibility must not interfere with or jeopardize funding per federal requirements. Any transfer must not interfere with the equitable delivery of distance learning or social distancing models. The Commissioner of Education must provide guidance on the fund balance transfers that are allowable for the purposes outlined above.

22. Upon approval by the Executive Council, districts and schools may use fiscal year 2020 ("FY 2020") revenues from programs that are not already assigned to staff salary and benefits for the following purposes: to provide care to Eligible Children during the school day; and to pay additional transportation costs incurred between March 30, 2020 and April 30, 2020 needed to implement this Executive Order. The expanded revenue use in a program is allowed if it does not increase state aid obligations to the district and schools or result in additional property tax authority for the district other than what would be received under the statutory uses of the revenue in FY 2020. A school board must approve the use of FY 2020 revenue from operating funds of a district by the fiscal year reporting deadline. A district must maintain accounting records for the purpose of this Executive Order which may be reviewed by auditors and that are sufficient to document the specific use of those funds. The Commissioner of Education must provide guidance on the state revenue programs that may be used for the purposes outlined in this Executive Order.

23. The Children's Cabinet will coordinate strategies to share information, including creating and posting online public health guidance specific to school and child care

provider settings, managing questions from schools and child care providers through hotlines, and considering other needs.

24. Child care providers and school staff caring for Eligible Children should be placed on the state's priority list for COVID-19 testing. This priority list will not guarantee imminent testing as capacity in testing shifts due to nationwide testing capacity limitations.

25. No supplier or business should limit or restrict reasonable orders of cleaning, hygiene, and sanitation supplies by child care providers who are serving Eligible Children as defined in this Executive Order and as provided by further guidance.

26. Upon approval by the Executive Council, I authorize and direct the Commissioner of Education to close any available open statewide assessments, effective 5:00 pm on Friday, March 27, 2020.

27. If the federal waiver application referenced above is approved by the U.S. Department of Education, I authorize the Commissioner of Education to determine how to best satisfy general school district reporting requirements for the 2019-20 school year, including the reporting and identification requirements of the NorthStar and World's Best Workforce accountability systems. These decisions will include any future Minnesota legislative reports and the reporting requirements set forth in Minnesota Statutes 2019, sections 120B.11, 120B.30, 120B.31, 120B.35, 120B.36, 122A.414, 124D.59, 124D.98, 124D.861, 136F.302.

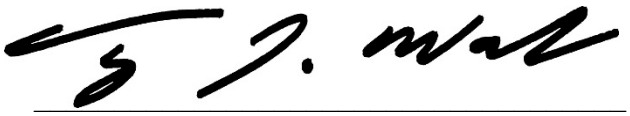
28. Schools and school districts unable to fully implement Minnesota Statutes 2019, section 120B.30, subdivision 1(e) due to school closures or the use of distance learning are exempt from this requirement for school year 2019-20. MDE will provide additional guidance to schools and school districts no later than the beginning of the 2020-21 school year.

29. Because there will be extremely limited assessment results, the Commissioner of Education should explore alternative federal reporting options, such as Ed*Facts*, for the 2019-20 school year.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective upon approval by the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

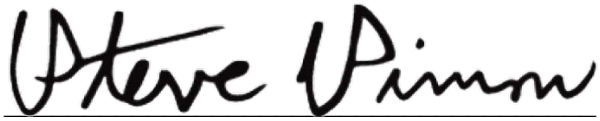
A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on March 25, 2020.



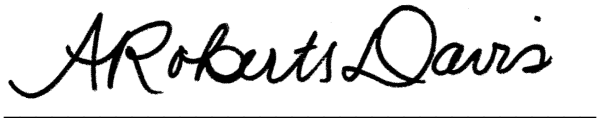
Tim Walz
Governor

Filed According to Law:



Steve Simon
Secretary of State

Approved by the Executive Council on March 25, 2020:



Alice Roberts-Davis
Secretary, Executive Council

Filed March 25, 2020
Office of the Minnesota
Secretary of State,
Steve Simon