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 #64 Pursuant to Executive Order 2020-04 as Extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, and 2020-16

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, experts indicate that COVID-19 is most commonly spread from an infected, symptomatic person to others through respiratory droplets, including:

- Through the air by coughing and sneezing;
- Close personal contact, such as touching or shaking hands;
- Touching an object or surface with the virus on it, then touching your mouth, nose, or eyes before washing your hands.

WHEREAS, the CDC reports that COVID-19 may be spread before an infected person shows symptoms of the virus; 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 reaffirms, K-12 Back-to-School Guidance (the "Guidance") that sets forth mitigation strategies to assist school districts in safely re-opening schools for the 2020-2021 school

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year; and

WHEREAS, various factors set forth in the Guidance vary greatly between school districts and from school to school, making a one-size-fits-all application of the Guidance impractical; and

WHEREAS, New Hampshire public and non-public K-12 schools need the flexibility to provide in-person, remote, and hybrid instruction as appropriate for their individual circumstances and the changing circumstances of the pandemic to implement safe and appropriate back-to-school plans.

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, and 2020-16, it is hereby ordered, effective immediately, that:

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 remote instructional model for their general education population 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 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, distance learning, 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. It is expected, however, that schools will operate using in-person instruction to the extent possible based on the factors set forth in the Guidance. Further, notwithstanding the options that schools may elect pursuant to the flexibility provided by the provisions of this paragraph 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.

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4. 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 4 shall be effective for one calendar year from the date of issuance.

Given under my hand and seal at the Executive Chambers in Concord, this 13th day of August, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

Chris T. Sununu

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