STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-82

Authorizing and Directing the Commissioner of Education to Require School Districts and Charter Schools to Provide a Safe and Effective Learning Environment for Minnesota's Students during the 2020-21 School Year

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. After notifying the Legislature, on April 13, 2020, May 13, 2020, June 12, 2020, and July 13, 2020, I issued Executive Orders extending the peacetime emergency declared in Executive Order 20-01. In Executive Order 20-01, I directed all state agencies to submit proposed orders and rules to protect and preserve public health and safety.

The health and safety of Minnesotans is my top priority. In response to the COVID-19 pandemic and in consultation with the Commissioner of Education ("Commissioner") and the Commissioner of Health, I issued Executive Orders 20-02 and 20-19, first closing schools to plan for a safe education environment and then implementing a distance learning period for Minnesota public school districts and charter schools. I also issued Executive Order 20-41 to extend the distance learning period to the end of the 2019-20 school year. Most recently, I issued Executive Order 20-57 to allow public school districts and charter schools the option to offer summer learning through a hybrid model or distance learning.

On June 18, 2020, the Minnesota Department of Education ("MDE") and the Minnesota Department of Health ("MDH") issued guidance to help school districts and charter schools plan for the 2020-21 school year in light of the COVID-19 pandemic. MDE and MDH directed public school districts and charter schools to create three educational delivery plans based on different instructional models: in-person learning for all students; hybrid learning with strict social distancing and capacity limits; and distance learning only. Districts and schools were directed to do this planning because it is imperative that, as this pandemic evolves, our schools are prepared to turn the dial in response to any changing environment during the 2020-21 school year.

Schools are critical to our communities and impact the physical and mental health, economic success, growth, and development of students and families. Education is a fundamental determinant of health. It cultivates life skills, knowledge and reasoning, social-emotional awareness and control, and community engagement; all of these skills serve people over the course of a lifetime. Schools also function as tools and resources for public health intervention by addressing core needs like nutrition, access to health and social support services, and support for families and communities. The health, safety, and wellness of our students, staff, and families is always at the center of our decisions.

Through robust engagement and ongoing dialogue, state and community leaders continue to hear from our students, families, educators, and school staff members. Minnesotans have made many significant sacrifices to create equitable distance learning opportunities. While it is possible that protecting public health may require future periods of distance learning, we must recognize and address the challenge it creates for everyone in our school communities. These challenges include missed connections to peers, educators, and staff, as well as a lack of access to technology, in-school meals, mental health supports, and other services. Such challenges have made distance learning difficult for everyone in our school communities, and especially our students of color, Indigenous students, English language learners, students receiving special education services, students experiencing homelessness, migrant students, and students from low-income families.

With student and school staff safety as the priority, the Commissioner and I, in consultation with the Commissioner of Health, have concluded that a school district or charter school must adhere to parameters set forth in the "Safe Learning Plan for 2020-21" ("Safe Learning Plan") in implementing the three instructional models. Circumstances may require turning the dial backward (less in-school instruction) or allow for turning the dial forward (more in-school instruction). While reopening school buildings for in-person instruction is our ultimate goal, and we recognize that many children and families have experienced additional economic hardships, social isolation, and other stressors through distance learning, the main priority must continue to be the health, safety, and wellness of our students, staff, and community. During the COVID-19 pandemic, our school districts and charter schools must continue to collaborate closely with MDE, MDH, and local public health authorities.

The Commissioner, in collaboration with the Commissioner of Health, continues to retain the authority to close schools, charter schools, and school districts or to curtail school activities. However, this Executive Order also gives local school districts and charter schools the ability to dial back or dial forward activities consistent with the latest data, guidance, and parameters set forth in the Safe Learning Plan. Our state agencies, along with local and regional partners, will provide our local education agencies the proper guidance and parameters to support them in making these important determinations for their communities. In collaboration with community partners, educators, families, and students, a school district or charter school may choose to be more restrictive than what is recommended by the most up-to-date parameters set forth in the Safe Learning Plan. We will also ensure that distance learning continues to be a widespread option for families concerned about in-person learning, and this option must meet the needs of all students who choose it.

As provided in MDE guidance, care for school-aged children of certain workers in critical sectors ("Eligible Children") must continue during the implementation of distance and hybrid learning models. I am grateful for the care that school districts and charter schools have provided during this pandemic. In consultation with the Minnesota Children's Cabinet, MDE will continue to provide guidance regarding child and school age care, enrichment, and learning during the 2020-21 school year. All programs serving children must follow public health guidelines on masking, social distancing, personal hygiene, screening, and cleaning practice ("Public Health Guidelines"). I encourage school districts and charter schools to continue to prioritize innovation and direct outreach to students.

In Minnesota Statutes 2019, section 12.02, 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.

Under Minnesota Statutes 2019, section 12.21, subdivision 3(11), the Governor may authorize the Commissioner "to alter school schedules, curtail school activities, or order schools closed." Pursuant to subdivision 3(1) of that 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. 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.

For these reasons, I order as follows:

1. Previous COVID-19 Executive Orders related to the Commissioner of Education remain in effect except as modified or superseded by this Executive Order.

2. This Executive Order applies to all schools as set forth in Minnesota Statutes 2019, section 12.21, subdivision 3(11). I continue to encourage tribal and nonpublic schools to fulfill the spirit and directives of this Executive Order.

3. Nothing in this Executive Order should be construed to encourage or require Minnesotans in categories at risk of severe illness from COVID-19 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 website (https://www.health.state.mn.us/diseases/coronavirus/).

4. To begin the 2020-21 school year, school districts ("districts") and charter schools must implement an appropriate instructional model that adheres to parameters set forth in the Safe Learning Plan. The initial determination of which instructional model a district or charter school implements to start the 2020-21 school year must be

made at least two weeks prior to the start of their respective school year calendar. I direct MDH to update the Safe Learning Plan as needed to respond to the evolving COVID-19 environment. Pursuant to MDE and MDH guidance, all districts and charter schools must offer a distance learning model that meets the educational needs of all students of families who choose not to receive in-person instruction.

5. Consistent with MDH guidance and in consultation with local public health officials, MDH, and MDE to the extent possible, a district or charter school may dial back to an instructional model that is more restrictive than what is required under the Safe Learning Plan if the district or charter school determines that dialing back is necessary for a school building or particular grades of instruction. Such actions must be consistent with guidance outlined in paragraph 8. If a district or charter school chooses to dial back to a more restrictive instructional model than what is required by the Safe Learning Plan, it must notify the Commissioner within 24 hours of implementing the more restrictive instructional model.

6. Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 3(11), the Commissioner is authorized to order a district or charter school to dial back to a more restrictive instructional model if the Commissioner, in consultation with MDH and the district or school, determines the instructional model being utilized by the district or charter school is no longer appropriate pursuant to the Safe Learning Plan.

7. More restrictive models of instruction may be necessary for individual classrooms within a school based on the circumstances. MDH will work in consultation with MDE and schools to ensure clear public health guidance, notification, and processes are implemented to protect the safety of students, staff, and the overall school community.

8. In the Safe Learning Plan, MDH must provide parameters to districts and charter schools that indicate when a district or charter school must dial back to a more restrictive instructional model and tailor models based on age group and grade. A district or charter school must consider this guidance when determining whether to limit in-person instruction pursuant to paragraph 5. The Commissioner, in consultation with the Commissioner of Health, must work with education partners to develop training to assist districts and charter schools in making decisions to dial back instruction.

9. A district or charter school that has dialed back its instructional model pursuant to paragraphs 4 or 5 may subsequently dial forward to a less restrictive instructional model if doing so is in adherence with the Safe Learning Plan. If a district or charter school chooses to dial forward to a less restrictive instructional model, it must notify the Commissioner within 24 hours of implementing the less restrictive instructional model.

10. I encourage the Service Cooperatives to be available to provide support to districts and charter schools within their region that are working with MDH, MDE, and local public health officials to determine whether to dial back or dial forward instructional

models pursuant to paragraphs 4, 5, or 9. I also encourage the Service Cooperatives to provide support to districts and charter schools within their region as they implement such models.

11. I encourage districts and charter schools to either utilize their current incident command team or create an incident command team to direct decisions and planning around dialing forward and backward between instructional models pursuant to paragraphs 4, 5, 6, and 9. I direct MDE to develop guidance related to the composition and duties of incident command teams.

12. I direct the Commissioner of Health to continue to use the tools at her disposal, including Health Alert Network advisories and other guidance, to ensure that school staff and students who have been exposed to COVID-19 are tested promptly. I also direct state agencies and COVID-19 response efforts to develop comprehensive strategies to achieve that goal.

13. Consistent with labor agreements, districts and charter schools must utilize available staff who are able to work during the 2020-21 school year. Districts and charter schools must also provide accommodations to staff as required by applicable laws and must allow school staff whose health is at risk or who have members of their household whose health is at risk to work from home to the extent possible.

14. If a district or charter school will be implementing in-person learning or a hybrid learning model to commence the 2020-21 school year, its educators and other workers, in accordance with Public Health Guidelines and paragraph 13, will report to their respective school buildings no later than two business days before the start of the 2020-21 year to plan and prepare for students' return to school buildings.

15. Pursuant to paragraph 17 of Executive Order 20-57, I direct the Commissioner, in consultation with the Commissioner of Health, to continue to update guidance for in-person learning, hybrid-learning, and distance learning during the 2020-21 school year.

16. Districts and charter schools must comply with Public Health Guidelines, applicable MDE guidance, and this Executive Order.

17. Districts and charter schools must provide students, teachers, and staff with a teaching and learning environment that complies with Public Health Guidelines, including, but not limited to, creating as much physical space between students and teachers as is feasible.

18. Activities and extracurricular programming should continue to follow the COVID-19 Prevention Guidance for Youth Programs and COVID-19 Sports Guidance for Youth and Adults and Youth Programs Guidance.

19. Consistent with labor agreements, to the extent required by the Public Employment Labor Relations Act, Minnesota Statutes 2019, Chapter 179A, districts and charter schools are expected to negotiate resources for contracted teachers and staff

supporting all instructional models, including, but not limited to, wages, benefits, work schedules, access to appropriate personal protective equipment, and public health protocols for safe and healthy teaching and learning conditions.

20. During the 2020-21 school year, all districts and charter schools providing in-person learning for all students must do so according to the plans developed during the Summer Learning Period, as defined by paragraph 2 of Executive Order 20-57, revised as needed, pursuant to applicable federal and state statutes. All districts and charter schools must also create contingency plans for distance learning and hybrid learning to be used if the district or charter school chooses to dial back in-person instruction pursuant to paragraph 5 or is required to dial back in-person instruction pursuant to paragraphs 4 or 6. Districts and charter schools are strongly encouraged to engage their school community (staff and families) and document that engagement in their plans.

21. If a district or charter school chooses to dial back in-person instruction pursuant to paragraph 5 or is required to dial back in-person instruction pursuant to paragraphs 4 or 6, the district or charter school must continue to provide meals to students during the school day to the extent possible, utilizing all waivers and flexibilities provided by the U.S. Department of Agriculture ("USDA").

22. Districts and charter schools must electronically post and communicate their plans for in-person learning, hybrid learning, and distance learning plans to students and their families no later than one week before the beginning of their respective 2020-21 school year. Districts and charter schools must make all reasonable efforts to provide such communications orally and written in languages spoken in their respective district or charter school. The contingency plans must address, but not be limited to, communication pathways with students and families, community input on student and family needs, and other outreach opportunities. This is in addition to addressing core instruction, supports for all student groups, nutrition, school-age care, technology needs, and effective delivery of educational models to students in a distance learning or hybrid model setting. The Commissioner may review whether a plan adequately addresses technological disparities in access and learning. The Commissioner may recommend changes and provide technical assistance to district and charter school programming to address any such disparities, to assist in meeting the needs of their students, staff, and communities.

23. A district or charter school that chooses to dial back in-person instruction pursuant to paragraph 5 or is required to dial back in-person instruction pursuant to paragraphs 4 or 6, must provide continuous education based on its distance learning and hybrid learning contingency plans.

24. Subject to paragraph 3, districts and charter schools that choose to dial back in-person instruction pursuant to paragraph 5 or are required to dial back in-person instruction pursuant to paragraphs 4 or 6, in cooperation with state agencies, are directed to support communities disproportionately impacted by distance learning and hybrid learning, including but not limited to, historically marginalized or disenfranchised

families and families experiencing homelessness. Where appropriate, districts and charter schools should prioritize providing in-person instruction and services to students from such communities and families. MDE will continue to provide additional guidance to districts and charter schools about this provision.

25. When providing instruction in person, a district or charter school must continue to run its early childhood programs pursuant to Public Health Guidelines, including community education programs, and may charge fees on its normal sliding fee scale. A district or charter school may also continue to provide before and after school care and may charge fees on its normal sliding fee scale.

26. A district or charter school that dials back in-person instruction pursuant to paragraph 5 or is required to dial back in-person instruction pursuant to paragraphs 4 or 6, must provide care for Eligible Children at no cost during the time those children are not receiving instruction in the school building during regular school hours. Workers required to provide care to Eligible Children under this Executive Order, which extends the requirement under Executive Order 20-02, paragraph 11, and Executive Order 20-19, paragraph 18, continue to enjoy the presumption provided under Minnesota Laws 2020, Chapter 72, section 1. A district or charter school may continue to run early childhood programs, including community education programs, and may charge fees on its normal sliding fee scale. I continue to encourage districts and charter schools to provide before and after school care, and they may charge fees for such care on their normal sliding fee scale. In providing this care, schools must follow Public Health Guidelines. Schools are not required to provide care during previously scheduled breaks reflected on a school-board approved calendar. MDE will provide further guidance to districts, charter schools, and the public about this provision.

27. Upon approval by the Executive Council, a district or charter school that chooses to dial back in-person instruction pursuant to paragraph 5 or is required to dial back in-person instruction pursuant to paragraphs 4 or 6, must allow 2020-21 graduating seniors to complete any testing required to attain a state bilingual or multilingual seal under Minnesota Statutes 2019, section 120B.022, subdivision 1b.

28. Consistent with tribal considerations, guidance from MDE, and the federal Every Student Succeeds Act ("ESSA"), all consultations, collaborations, and partnerships with Tribal Nations, American Indian Parent Committees, and Indigenous Education staff must continue. American Indian Education Aid Program Plans must be considered when creating contingency distance learning and hybrid learning plans.

29. Upon approval by the Executive Council, if a district or charter school chooses to dial back instruction to a distance learning model pursuant to paragraph 5, is required to dial back the instruction to a distance learning model pursuant to paragraphs 4 or 6, or returns to in-person instruction from a distance learning model for one or more schools, the district or charter school may use up to five instructional days at the impacted school or schools to plan for the change in instructional delivery during the 2020-21 school year. Staff must use the designated planning days to plan for the

change in instructional delivery. These planning days may be counted as instructional days even if students may not be receiving instruction. Students who are enrolled in the school on the day immediately prior to the planning day may be counted in attendance and membership. Any days over five instructional days used for planning days pursuant to this paragraph may be counted as instructional days with MDE approval.

30. Upon approval by the Executive Council, the requirement to perform in-person developmental screenings under Minnesota Rules 2019, part 3530.3400, is waived if a district or charter school chooses to dial back in-person instruction to a distance learning model pursuant to paragraph 5 or is required to dial back in-person instruction to a distance learning model pursuant to paragraphs 4 or 6. MDE must develop guidance on a parent report tool in place of the in-person developmental screening.

31. Upon approval by the Executive Council, the requirement to complete early childhood developmental screening within 30 days under Minnesota Statutes 2019, section 121A.17, is extended to 90 days. This will allow children to remain enrolled in kindergarten if a district or charter school chooses to dial back in-person instruction to a distance learning model pursuant to paragraph 5 or is required to dial back in-person instruction to a distance learning model pursuant to paragraphs 4 or 6.

32. If a district or charter school is providing instruction through a distance learning model pursuant to paragraphs 4, 5, or 6, I authorize the Commissioner, in consultation with the Commissioner of Health, to expand in-school provision of activities and programming that the Commissioner deems necessary and that can be operationalized in compliance with Public Health Guidelines. This expansion of in-school activities must be where those services cannot be provided through a distance learning model and those services are needed to access that student's distance learning instruction, provide supports or services schools can safely offer, and create opportunities for meaningful connections between students and teachers.

33. The Commissioner, in consultation with the Commissioner of Health, must establish a protocol in accordance with Public Health Guidelines to allow for home visits by school staff to build and preserve relationships with students and their families for when a district or charter school is providing instruction through a distance learning model pursuant to paragraphs 4, 5, or 6. Nothing in this protocol should be interpreted as a requirement or should be used to replace services provided by counties or social services.

34. I encourage districts and charter schools that choose to dial back in-person instruction, pursuant to paragraph 5 or are required to dial back in-person instruction pursuant to paragraphs 4 or 6, to allow students to retain any technology provided to them through the remainder of the 2020-21 school year. I also expect districts and charter schools to continue to provide maintenance for this technology.

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

36. Upon approval by the Executive Council, the following payments received by Minnesotans as the result of the COVID-19 pandemic must not be counted as income when determining eligibility for the early learning scholarships program administered by MDE, pursuant to Minnesota Statutes 2019, section 124D.165:

    a. Federal CARES Act payments of up to $1,200 per adult and $500 per child.

    b. Any other federal government payments issued to individuals to relieve the adverse economic impact caused by the COVID-19 pandemic.

    c. State government payments issued to individuals to relieve the adverse economic impact caused by the COVID-19 pandemic.

    d. Local government payments issued to individuals to relieve the adverse economic impact caused by the COVID-19 pandemic.

    e. Tribal government payments issued to tribal members to relieve the adverse economic impact caused by the COVID-19 pandemic.

37. Upon approval by the Executive Council, when determining eligibility for the programs administered by MDE, the above payments will not be counted as assets, personal property, or resources.

38. Upon approval by the Executive Council, for Fiscal Year 2021 only, expenses for special education staff assigned to other work during distance learning or hybrid learning implemented pursuant to paragraphs 4, 5, or 6, 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 must notify districts and charter schools of these formula changes as soon as practicable.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately 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 July 30, 2020.

Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on July 30, 2020:

Alice Roberts-Davis
Secretary, Executive Council

Filed July 30, 2020
Office of the Minnesota
Secretary of State,
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