EXECUTIVE ORDER NO. 175

WHEREAS, on March 9, 2020, through Executive Order No. 103, the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard created by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, and 171 issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, and August 1, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, and Nos. 168-173 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are

also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19, including the closure of all public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, to students and the cessation of in-person instruction at all private and public institutions of higher education; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) required all public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, to continue to remain closed to students and required all public and private institutions of higher education to continue to cease in-person instruction; and

WHEREAS, in light of month-to-month decreases in the rate of reported new cases of COVID-19 in New Jersey, the State began to take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreased, the ongoing risks presented by COVID-19 meant that many of the State's measures remained in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health, I announced a multi-stage New Jersey's Road Back Plan ("Road Back Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, consistent with the Road Back Plan, I issued Executive Order No. 149 (2020), which authorized the gradual restart of ordinary child care services, certain youth sporting activities, and summer camps, including public and non-public school district-operated summer educational programming, with social distancing and infection control requirements, Executive Order No. 155 (2020), which permitted the resumption of limited in-person instruction at institutions of higher education, Executive Order No. 157 (2020), which permitted indoor recreational facilities to resume operations in accordance with certain health and safety restrictions, and Executive Order No. 168 (2020), which allowed for the resumption of contact sport practices and competitions for certain organized sports in outdoor settings; and

WHEREAS, the resumption of youth sports activities, youth summer camps, and school district-operated summer educational programs, with appropriate health and safety protocols, have not resulted in any notable increase in New Jersey's number of COVID-19 cases; and

WHEREAS, the Department of Education has determined that in-person instruction provides students with academic, social, emotional, and mental health supports that cannot be provided with the same level of efficacy in a remote setting; and

WHEREAS, the Department of Education has found that reopening schools for in-person instruction is critical in facilitating the social and emotional health of students and providing educators with the ability to actively participate in student learning, provide feedback, and promote active learning among students on a daily basis; and

WHEREAS, the American Academy of Pediatrics has determined that in-person instruction is preferred over other forms of instructional delivery for reasons such as addressing and preventing learning loss, attending to students' social and emotional wellbeing, and minimizing educational inequities resulting from the remote learning model; and

WHEREAS, New Jersey's schools serve a critical function for the State's workforce, in that they provide safe supervision of children during the day, allowing parents and guardians to work and move the economy forward; and

WHEREAS, in order to provide the many benefits of in-person instruction, New Jersey public and private schools alike must ensure that the school environment is safe for both students and staff; and

WHEREAS, access to school buildings is not available to the general public and the individuals present in a school building do not vary from day to day, which creates a lesser risk of COVID-19 transmission than exists in spaces generally open to the public and makes contact tracing substantially easier in the event of an outbreak; and

WHEREAS, a school district may need additional time to properly implement the health and safety precautions necessary to return any portion of the student population to in-person instruction, potentially making it necessary for such district to begin the 2020-2021 school year with remote instruction for all students; and

WHEREAS, those school districts that are unable to meet the necessary health and safety precautions must actively strive to address any deficiencies in order to return all or a portion of

its student population to in-person instruction at the earliest possible date; and

WHEREAS, it is necessary for families to have the option to engage in full-time remote learning, even where a school district is providing in-person instruction; and

WHEREAS, unlike other activities that can take place without gathering limits outdoors, education-related activities cannot be readily relocated outdoors for many reasons, including the need for continuous supervision of children, which is considerably more difficult in outdoor settings; and

WHEREAS, because education-related activities often take place over the course of a full school day and happen every weekday, it is much more difficult to stagger the time that students spend in educational facilities; and

WHEREAS, pursuant to N.J.S.A. 18A:6-123(b)(2) and (4), measures of student growth based on standardized assessments are a component of gauging student progress in overall educator evaluations; and

WHEREAS, the cancellation of statewide assessments for the Spring 2020 testing window pursuant to Executive Order No. 117 (2020) resulted in reduced availability of data regarding student achievement and performance; and

WHEREAS, due to the lack of standardized assessment data for the 2019-2020 school year, it will not be possible to measure student growth through multiple objective measures from the 2019-2020 school year as a measure for overall educator evaluations as required by N.J.S.A. 18A:6-123(b)(2) and (4); and

WHEREAS, overall educator evaluations consist of additional categories that remain unaffected by the cancellation of statewide assessments for the Spring 2020 testing window and thus will serve

as accurate measures of teacher performance for the 2020-2021 school year; and

WHEREAS, it is appropriate to allow institutions of higher education to resume in-person instruction not previously permitted under Executive Order No. 155 (2020) while adhering to necessary health and safety standards; and

WHEREAS, cafeterias and other designated eating areas within public and private school buildings and institutions of higher education play essential roles in the provision of meals to students, faculty, and staff, and allow for the safe and cleanly consumption of meals; and

WHEREAS, cafeterias and other designated eating areas within public and private school buildings and institutions of higher education are not open to the general public in the same manner as traditional indoor dining establishments, thus creating decreased risk of transmission of COVID-19 when appropriate health and safety protocols are in place; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective immediately, Executive Order Nos. 104 (2020) and 107 (2020) are hereby superseded to the extent that they require all public, private, and parochial preschool program

premises, and elementary and secondary schools, including charter and renaissance schools (collectively "school districts"), to remain closed.

2. All school districts that reopen for full or part-time in-person instruction must meet the following health and safety standards, delineated in the Department of Education's "Checklist for Re-Opening of School 2020-2021" and detailed in "The Road Back: Restart and Recovery Plan for Education" which include, but are not limited to the following:

a. At least six (6) feet of distance between individuals in all settings to the greatest extent practicable or social distancing modifications, such as a physical barrier or turning desks to face the same direction, when six (6) feet of distance cannot be achieved;

b. Mandatory use of face coverings by staff, students, and visitors, except in the following circumstances:

i. When doing so would inhibit the individual's health;

ii. When the individual is exposed to extreme heat outdoors;

iii. When the individual has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;

iv. When a student's documented medical condition or disability, as reflected in an Individualized Education Program (IEP) or Educational Plan pursuant to Section 504 of

the Rehabilitation Act of 1973, precludes the use of a face covering;

v. When the individual is under two (2) years of age;

vi. When the individual is eating or drinking;

vii. When the individual is engaged in high-intensity aerobic or anerobic activity;

viii. When a student is participating in high-intensity physical activities during a physical education class in a well-ventilated location and able to maintain a physical distance of six feet from all other individuals;

ix. When a student, as part of music instruction, is playing an instrument that would be obstructed by the face covering; or

x. When wearing a face covering creates an unsafe condition in which to operate equipment or execute a task.

c. Routine cleaning and sanitization of classrooms, lunchrooms, gymnasiums, restrooms, high-trafficked areas such as hallways, high-touch areas such as light switches and door knobs, and shared surfaces;

d. The facilitation of student hand washing at frequent intervals, or use of alcohol-based hand sanitizer if soap and water are not readily available;

e. Use of face coverings and social distancing procedures to the extent practicable and cleaning protocols on school buses if students are bussed to and from school;

f. Student and staff health screenings;

g. Implementation of enhanced social distancing and infection control protocols for music, choir, and physical education classes that are conducted in indoor spaces, particularly where students are not wearing face coverings;

h. A plan for response to students and staff that exhibit symptoms of COVID-19, which must include coordination with the local health department and procedures for isolating symptomatic students and staff;

i. A plan detailing the response when students and/or staff test positive for COVID-19, which must include coordination with the local health department and procedures for isolating any students or staff who learn of a positive test result while on school grounds;

j. Coordination with the local health department to support contact tracing efforts;

k. A plan to ensure that indoor facilities have adequate ventilation;

l. Implementation of social distancing and infection control practices during recess and physical education periods; and

m. Procedures for resumption of athletics programs and extracurriculars, if applicable.

3. Public preschool, elementary, and secondary schools, including county vocational schools, charter schools, and renaissance schools (collectively "public school districts"), shall resume partial or full-time in-person instruction during the fall of school year 2020-2021.

4. Public school districts shall submit a reopening plan (the "Plan") to the Department of Education at minimum thirty days prior to the first day of school. A public school district that has already submitted such Plan pursuant to the standards outlined in "The Road Back: Restart and Recovery Plan for Education" will be considered to have satisfied this requirement if the Plan is otherwise consistent with the requirements of this Order. In addition to the Plan, a minimum of seven days prior to the first day of school, the chief school administrator or his/her designee must also certify to the Department of Education that the district has policies and procedures in place to meet the minimum health and safety standards set forth in Paragraph 2.

5. Nonpublic schools shall also create and maintain reopening plans. Those schools that intend to resume partial or full-time in-person instruction during the fall of 2020-2021 school year must certify to the Department of Education that the school has policies and procedures in place to meet the minimum health and safety standards set forth in Paragraph 2 of this Order.

6. School districts that resume partial or full-time in-person instruction shall permit students to engage in full-time remote learning upon the request of a parent or guardian, subject to the Department of Education's July 24, 2020 "Clarifying Expectations Regarding Full-time Remote Learning Options for Families in 2020-2021." School districts must implement a policy that, at a minimum, addresses the following:

a. Unconditional eligibility for full-time remote learning;

b. Procedures for parent or guardian submission of full-time remote learning requests;

c. The scope and expectations of full-time remote learning;

d. Procedures to transition from full-time remote learning to in-person instruction and services;

e. Reporting data to the Department of Education regarding participation in full-time remote learning. Data must include number of students participating in full-time remote learning by each of the following subgroups: economically disadvantaged; major racial and ethnic groups; students with disabilities; and English learners; and

f. Procedures for communicating the school district's full-time remote learning policy to school district families.

7. Public school districts that are or become unable to satisfy the health and safety requirements for in-person instruction, as detailed in Paragraph 2 of this Order, may provide full-time remote instruction to all students pursuant to N.J.S.A. 18A:7F-9.

8. Public school districts that determine that they cannot provide in-person instruction pursuant to Paragraph 7 of this Order must submit documentation to the Department of Education that identifies:

a. The school building(s) or grade level(s) within the district that will provide full-time remote instruction;

b. The specific health and safety standard(s) listed in Paragraph 2 of this Order that the school is unable to satisfy;

c. The school's anticipated efforts to satisfy the identified health and safety standard(s); and

d. A date by which the school anticipates the resumption of in-person instruction.

Such documentation must be submitted at minimum one week prior to the public school district's first day of school.

9. The Department of Education, by way of executive county superintendents, shall request periodic updates from the chief school administrator of a public school district offering only remote instruction in accordance with Paragraphs 8 and 9 of this Order to demonstrate that the school district is actively engaged in good-faith efforts towards the resumption of in-person instruction.

10. All instruction, whether in-person instruction or remote instruction, for the 2020-2021 year shall adhere to the following requirements, and any other requirements imposed by Order, statute, or regulation:

a. A school day, whether in-person or remote must consist of at least four (4) hours of active instruction to students by an appropriately certified teacher, except that one continuous session of two and one-half hours may be considered a full day in kindergarten, pursuant to N.J.A.C. 6A:32-8.3.

b. District and school policies for attendance and instructional contact time will need to accommodate opportunities for both synchronous and asynchronous instruction, while ensuring the requirements for a 180-day school year are met pursuant to N.J.S.A. 18A:7F-9.

c. All instructional time shall be provided in accordance with the New Jersey Student Learning Standards.

11. All school districts participating in the National School Lunch and Breakfast Programs, regardless of whether they are required to participate or voluntarily opt-in to the programs, must offer the required meals to all children, regardless of eligibility, when the school day involves at least four hours of in-person or remote instruction.

12. For the 2020-2021 school year, N.J.S.A. 18A:6-123(b)(2) and (4) shall be waived and student growth data based on standardized assessment or student growth percentile shall not be used as a measure of educator effectiveness in the overall evaluation of any educator.

13. Effective immediately, degree-granting institutions of higher education may resume all in-person instruction not previously permitted in Executive Order No. 155 (2020). Institutions must provide students with the option of participation via remote instruction to the extent practicable.

14. In resuming in-person instruction, a degree-granting institution of higher education shall continue to adhere to the requirements of Paragraph 4 of Executive Order No. 155 (2020) as addressed in the restart plan submitted by the institution to the

Office of the Secretary of Higher Education, and any other requirements established by Order, statute, or regulation.

15. Nothing in Paragraph 13 of this Order shall be construed to preclude degree-granting institutions of higher education from continuing to provide instruction and services to students and members of the public in a form other than in-person instruction.

16. Paragraph 8 of Executive Order No. 107 (2020), which prohibits in-person dining at certain establishments that are open to the public, shall not apply to school district cafeterias or dining halls operated by degree-granting institutions of higher education, provided that social distancing can be maintained and access is limited to staff and students and is not available to the general public. In-person dining at degree-granting institutions of higher education shall continue to adhere to the requirements of Paragraph 4 of Executive Order No. 155 (2020) as addressed in the restart plan submitted by the institution to the Office of the Secretary of Higher Education. Such cafeterias and dining halls must adhere to infection control practices outlined for dining in the applicable reopening documents issued by the Department of Education and the Office of the Secretary of Higher Education.

17. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

18. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of

any nature whatsoever, to cooperate fully in all matters concerning this Order.

19. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

20. This Order shall take effect immediately.

GIVEN, under my hand and seal this 13th day of August, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor