EXECUTIVE ORDER NO. 117

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, to further 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; and

WHEREAS, on March 21, 2020, I issued Executive Order No. 107 (2020), the facts and circumstances of which are also adopted by reference herein, affirming the closure of all public and private schools to students for as long as that Order remains in effect (the "school closure period"); and

WHEREAS, pursuant to Executive Order No. 107 (2020), the Commissioner of Education and the New Jersey Department of Education ("NJDOE") are working closely with school districts and educational agencies to ensure that New Jersey students are able to continue their education during the school closure period through appropriate home instruction methods; and

WHEREAS, as of April 6, 2020, according to the World Health Organization, there were more than 1,210,000 confirmed cases of COVID-19 worldwide, with over 67,000 of those cases having resulted in death; and

WHEREAS, as of April 6, 2020, according to the Centers for Disease Control, there were more than 330,000 confirmed cases of COVID-19 in the United States, with over 8,900 of those cases having resulted in death; and

WHEREAS, as of April 6, 2020, there were over 41,000 positive cases of COVID-19 in New Jersey, with at least 1,003 of those cases having resulted in death; and

WHEREAS, the rapidly-evolving circumstances resulting from COVID-19 demand that the NJDOE operate as efficiently and effectively as possible to ensure that the students of New Jersey continue to receive high-quality education; and

WHEREAS, the ability of the NJDOE to so operate is dependent upon its ability to quickly adapt applicable rules and regulations to fit the unique circumstances presented by COVID-19; and

WHEREAS, on March 24, 2020, due to the mandatory closure of schools throughout the State, the NJDOE submitted a request to the United States Department of Education seeking a waiver of the federal requirement to administer all assessments required under section 1111(b)(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 ("ESSA"), for school year 2019-2020; and

WHEREAS, on March 24, 2020, the United States Department of Education waived the federal requirement mandating that New Jersey administer annual statewide assessments required pursuant to section 1111(b)(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, for school year 2019-2020; and

WHEREAS, on March 24, 2020, I announced that statewide assessments would be cancelled for the Spring 2020 testing window, as it is not feasible to move forward with statewide assessments while students are unable to physically attend school due to necessary COVID-19-related closures; and

WHEREAS, the waiver of the federal requirement for statewide assessments does not automatically waive New Jersey statutory and regulatory requirements associated with the administration of annual statewide assessments; and

WHEREAS, pursuant to N.J.S.A. 18A:7C-6.2, a statewide assessment must be administered to all eighth-grade students to assess progress toward mastery of State graduation proficiency standards and this assessment is a part of the statewide assessment system administered in accordance with ESSA accountability requirements; and

WHEREAS, in light of my March 24, 2020 decision to cancel all statewide assessments, the statutory mandate for a statewide eighth-grade assessment must be similarly addressed; and

WHEREAS, pursuant to N.J.S.A. 18A:7C-6, all students must demonstrate proficiency on a state assessment as a condition of graduation from high school; and

WHEREAS, pursuant to N.J.S.A. 18A:7C-3, any twelfth-grade student who has not met the graduation assessment requirement but who has met all the credit, curriculum, and attendance requirements shall be eligible for graduation by way of a portfolio appeal submitted by the school district to the NJDOE; and

WHEREAS, the NJDOE projects that approximately 13,000 students in the class of 2020 will utilize the portfolio appeal process to satisfy the statutory graduation assessment requirement; and

WHEREAS, as of March 27, 2020, approximately 650 portfolio appeals had been received and approved by the NJDOE, leaving approximately 95% of all anticipated portfolio appeals still in need of completion and/or approval; and

WHEREAS, the closure of all schools pursuant to Executive Order No. 107 (2020) presents substantive and procedural difficulties for districts in the compiling of complete portfolio appeals; and

WHEREAS, pursuant to N.J.S.A. 18A:6-123(b)(2) and (4), student performance on statewide assessments must serve as a measure of student progress in overall educator evaluations; and

WHEREAS, the cancellation of statewide assessments for the Spring 2020 testing window will necessarily result in the absence of data regarding student achievement and performance for the 2019-2020

school year and thus prohibit the inclusion of such data as a measure of overall educator performance and evaluation; and

WHEREAS, pursuant to N.J.S.A. 18A:6-123(b)(3), student growth towards locally-determined academic goals must serve as a measure of educator effectiveness in overall educator evaluation; and

WHEREAS, the closure of elementary and secondary schools to students prevents school and district administrators from setting and measuring student performance against locally-determined academic goals; and

WHEREAS, pursuant to N.J.S.A. 18A:6-123(b)(6), educator performance must be linked to student achievement, which involves student performance on statewide assessments and student growth towards locally-determined academic goals; and

WHEREAS, N.J.S.A. 18A:6-121 requires school district superintendents to conduct evaluations of each principal employed by the school district, including an annual summative evaluation, and requires the principal, in conjunction with the superintendent or his or her designee, to conduct evaluations of each assistant principal and vice principal employed in the principal's school, including an annual summative evaluation; and

WHEREAS, given the interference of the present circumstances with the ability of school district administrators to engage in observation and evaluation of principals, assistant principals, and vice principals, the statutory requirements pursuant to N.J.S.A. 18A:6-121 to conduct administrator evaluations are no longer reasonable or appropriate for certain staff members under the circumstances; and

WHEREAS, pursuant to N.J.S.A. 18A:27-3.1, all non-tenured teaching staff must be observed and evaluated in the performance of their duties a minimum of three times prior to April 30 of each school year; and

WHEREAS, Executive Order No. 104 (2020) closed all schools to students effective March 18, 2020, approximately six weeks prior to the April 30 observation and evaluation deadline; and

WHEREAS, given the interference of the present circumstances with the ability of school district administrators to engage in observation and evaluation of non-tenured teaching staff since March 18, 2020, the requirement of three observations and evaluations prior to April 30, 2020, if not already satisfied, is no longer reasonable or appropriate under the circumstances; 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. Notwithstanding the provisions of any law to the contrary, the Commissioner of Education is authorized and empowered to waive, suspend, or modify any existing rules within Title 6A of the New Jersey Administrative Code, where the enforcement of which would be detrimental to the public welfare during this emergency, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

2. The statutory requirement for a statewide assessment of all eighth-grade students pursuant to N.J.S.A. 18A:7C-6.2 is waived and such assessment is cancelled for the 2019-2020 school year.

3. The statutory graduation assessment requirement mandated by N.J.S.A. 18A:7C-1 et seq. is waived for any twelfth-grade student who is expected to graduate in the class of 2020 but, as of March 18, 2020, had not met said graduation assessment requirement.

4. For the 2019-2020 school year, N.J.S.A. 18A:6-121 and N.J.S.A. 18A:6-123(b)(2), (3), (4), and (6) shall be waived and student growth data shall not be used as a measure of educator effectiveness in the overall evaluation of any educator.

5. The statutory requirement of three observations and evaluations for all non-tenured teaching staff as outlined in N.J.S.A. 18A:27-3.1 is waived for the 2019-2020 school year.

6. This Order shall take effect immediately.

GIVEN, under my hand and seal this 7th day of April, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor