STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-94

Authorizing the Commissioner of Education to Take Action to Improve the Education of Minnesota Students During the 2020-2021 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 continues to present an unprecedented and rapidly evolving challenge to our State. Minnesota has taken extraordinary steps to prevent and respond to the pandemic. 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. Since declaring the peacetime emergency, I have extended it every 30 days, with the most recent extension occurring on October 12, 2020.

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. On May 14, 2020, 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 July 30, 2020, I issued Executive Order 20-82, establishing parameters for school districts and charter schools to safely implement in-person, hybrid, and distance learning models in the 2020-21 school year.

With safety, health, and wellness as our touchstones, Minnesota students and educators have started the school year in various learning models consistent with the "Safe Learning Plan for 2020-21 School Year" ("Safe Learning Plan") available at the Minnesota Department of Education's ("MDE") COVID-19 website (https://education.mn.gov/MDE/dse/health/covid19/). Schools, local public health officials, regional experts, the Minnesota Department of Health ("MDH"), and MDE have collaborated to select and implement appropriate in person, hybrid, or distance learning models. I recognize and commend the tremendous sacrifices and hard work undertaken by all our students, families, educators, staff, and school leaders to make this school

year possible. State agencies are striving to listen and respond to the concerns of those implementing and participating in these learning models. There is more work to be done.

When we announced the Safe Learning Plan, we put the safety, health, and wellness of our students, families, and staff at the center of all that we do to ensure that each and every student has access to opportunities during the school day and before and after school. Schools serve as community hubs and provide critical supports to our students. We know that the pandemic has negatively impacted the health, education, and financial stability of too many families, especially families of color, indigenous families, and lower income families. While the virus may prevent in-person education in some situations, schools must continue to find ways to support our children and families most in need.

Minnesotans are grateful for the school-age care that school districts and charter schools have provided to families working in Tier 1 industries during this pandemic. We are grateful for the child care providers and staff who have helped to support families with school-age children during hybrid and distance learning. We recognize that our schools and community partners have been asked to continue to provide education services with limited staff and space capacity, all while complying with public health guidelines.

To support our students and families and respond to the pandemic, care for school-aged children of workers in Tier 1 industries ("Eligible Children") must continue without charge during the implementation of distance and hybrid learning models. I also strongly encourage school districts and charter schools to provide care to as many other school-aged children as they can accommodate. To meet this demand, school districts and charter schools must have adequate resources. Permitting school districts and charter schools to charge families reasonable fees for school-aged care services for before and after school care will allow them to extend care to more students. All programs serving children must follow public health guidelines on masking, social distancing, personal hygiene, screening, and cleaning practice ("Public Health Guidelines").

Children with disabilities and their families are particularly impacted by distance learning strategies, and they face unique and difficult challenges in receiving special education services. Current state law ends developmental delay services at age seven, but federal law, as allowed under IDEA Part B, 34 C.F.R. § 300.8(b), permits access to these services until age nine. During the peacetime emergency, some students are aging out of developmental delay services and are unable to be evaluated for other disabilities due to distance learning. This could cause students to fall behind. We must allow students who have aged out during the peacetime emergency to continue to receive services. I call upon school districts and charter schools to prioritize the safe provision of in-person instruction and services to students with disabilities whenever possible.

Certain special education services, such as special education transportation, have become especially strained during the pandemic. School districts and charter schools need access to expanded transportation capacity to meet public health and safety requirements. When schools are in a distance learning model, contractors do not receive payment and are forced to lay off drivers. When those school districts and charter schools return to hybrid or in-person learning, they need special education transportation capacity. The state must act to allow school districts and charter schools to continue to pay contracted special education transportation providers to

keep staff employed so that capacity is available when school districts and charter schools return to hybrid or in-person learning.

Student access to mental health services is all the more critical during this pandemic. At a time when many Minnesotans are experiencing increased trauma and challenges to mental well-being due to isolation, worries about the health of family and friends, racial trauma or injustice, economic struggles, and other concerns, access to mental health services is more complex than before. Prior to the pandemic, Minnesota students were reporting mental health distress at alarmingly increasing rates, and the pandemic has exacerbated the problem. Mental health care delivery is becoming more dependent on technology and school or community connections, and many children and families need in-person mental health services. I call upon our schools to increase access to mental health and share resources and tools to support our students during this stressful time.

During this pandemic, students and families face barriers to access and participation in educational opportunities. It is inappropriate to refer students, who have limited access to technology, connectivity, or educational resources, for truancy. Our schools must continue to implement creative and compassionate processes for engaging all students and their families rather than turning to punitive systems. This includes enlisting the help of community partners when possible.

Safety precautions against COVID-19, especially the wearing of protective face coverings, has become unnecessarily contentious. The health and safety of our students and all Minnesotans is my top priority. On July 22, 2020, I issued Executive Order 20-81, requiring Minnesotans to wear a face covering in certain settings to prevent the spread of COVID-19. Our administration has provided schools with face coverings for every student. We have also provided disposable coverings for students who forget their masks when they arrive at school. Despite this important collective requirement, some families will not comply with the COVID-19 precautions and restrictions. This has resulted in challenging circumstances for schools. Parents have stated that they intend to send their children to school without face coverings—even when their children present COVID-19 symptoms. In some situations, schools must determine how to isolate such students until they can safely return to their families. Students presenting symptoms cannot safely be provided an isolated education in the school building. To the extent possible, their education must continue through distance learning.

Educational opportunity is at risk for many students. Our educators need time to meet the needs of such students. Due to the variety of instructional models used across the state, teachers are required to prepare high-quality lessons and activities for distance learning while also providing a full, traditional instructional day. Teachers are stretched too thin. We must relieve pressures on schools and educators to allow for capacity and resources to focus on students' learning needs. Districts and charter schools should implement teaching and learning environments that do not require teachers to provide instruction simultaneously to students who are in person and those that are learning remotely. Additionally, current law does not provide needed flexibility related to minimum instructional hour requirements. Flexibility will allow for adequate preparation for teaching and learning, effective student engagement, and outreach to families. We must also

provide necessary flexibility to school districts and educators so that they can effectively mitigate the educational opportunity risk faced by many 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 encourage tribal and private schools to fulfill the spirit and directives of this and previous Executive Orders.

3. The following subparagraphs supersede paragraphs 25 and 26 of Executive Order 20-82. MDE will provide further guidance to districts, charter schools, and the public about these provisions.

    a. School districts and charter schools must provide free care to Eligible Children during regular school hours under any of the instructional models authorized in Executive Order 20-82, provided that all of the parents or legal guardians in the child's household are workers in Tier 1 industries as set forth in MDE's *2020-21 Planning Guidance for Minnesota Public Schools* ("MDE 2020-21 Planning Guidance"), available at MDE's COVID-19 website (https://education.mn.gov/MDE/dse/health/covid19/). School districts and charter schools may, and are encouraged to, provide care to all other children and may charge a fee on its normal sliding fee scale, but should prioritize those who qualify for free and reduced-price lunch, to the extent possible. School districts and charter schools may also encourage parents or legal guardians of Eligible Children to not use the school-age care program if they can work from home. 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, will continue to enjoy the presumption provided under Minnesota Laws 2020, Chapter 72, section 1.

b. When providing in-person instruction, a school 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. When providing instruction through a distance learning or hybrid model, a school 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 school districts and charter schools to provide before and after school care. School districts and charter schools may charge fees for before and after school care on their normal sliding fee scale, including for Eligible Children. 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. Districts are encouraged to coordinate and collaborate with child care providers and other care settings in their communities helping to meet these needs, create continuity of groupings wherever possible, and to prevent COVID-19 transmission and protect the public health of all children, staff, and families. Families may visit Minnesota's COVID-19 Resources for Families website (https://mn.gov/childcare/families/) to identify other care options, resources, and guidance.

4. School districts and charter schools are strongly encouraged to ensure that students have access to mental health and telehealth services and supports on their school-issued devices. They are also strongly encouraged to ensure that such services are fully accessible on students' school-issued devices. School districts and charter schools also must prioritize student mental health needs by implementing the MDE 2020-21 Planning Guidance on mental health and well-being, school climate, trauma-informed practices and social emotional learning, available at MDE's COVID-19 website (https://education.mn.gov/MDE/dse/health/covid19/). This may include providing information and resources to students and families on mental health and mental health services and supports, providing continuity of care with school-linked mental health, collaborating with community organizations to streamline referrals and resources for students in need of mental health supports, and providing training and support to school teachers and staff in identifying signs of mental health distress and options for supporting student mental wellbeing and access to supports.

5. School districts and charter schools operating in a distance or hybrid learning model that are providing in-person services in accordance with public health guidelines must prioritize providing in-person instruction and services to students with disabilities whose individualized education program calls for intensive services that cannot be provided in a distance learning model. MDE will continue to provide additional guidance to school districts and charter schools about this provision.

6. During the 2020-21 school year, school districts and charter schools are strongly discouraged from referring students for truancy programs and services under Minnesota Statutes 2019, section 260A.02, subdivision 3, or reporting students for educational neglect under Laws of Minnesota 2020, 1st Special Session, Chapter 2, article 7, until school districts and charter schools have exhausted all efforts to engage truant students and their families. MDE and the Minnesota Department of Human Services will continue to provide additional guidance to school districts and charter schools, and child welfare agencies regarding this provision.

7. School districts and charter schools are strongly encouraged to create a teaching and learning environment that allows teachers to provide asynchronous instruction to students who are in-person and learning remotely. School districts and charter schools may consider other models of hybrid learning schedules that allow teachers to most effectively meet the needs of students both in person and remotely.

8. Pursuant to paragraph 12 of Executive Order 20-81 and MDH's *2020-2021 Planning Guide for Schools*, available at MDE's COVID-19 website (https://education.mn.gov/MDE/dse/health/covid19/), which provides face covering and face shield guidance, all K-12 students, staff, and other persons present inside school buildings and district offices, on school grounds where social distancing cannot be maintained, or onboard school transportation vehicles, must wear a face covering. Students who have a medical condition, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering are not required to wear a face covering. For students who are able to wear a face covering but refuse to do so, school districts and charter schools are strongly discouraged from using suspension but may require such students to move to distance learning.

9. Upon approval by the Executive Council, a school district or charter school must count 30 minutes per day for teacher preparation to provide instruction to students in distance learning or a distance learning or hybrid learning model, as instructional time toward meeting the minimum hours required by Minnesota Statutes 2019, section 120A.41. This teacher preparation time is for students receiving instruction in distance learning or a distance learning or hybrid model. This time is in addition to a school district's or charter school's teacher preparation time established under Minnesota Statutes 2019, section 122A.50.

10. Upon approval by the Executive Council, schools operating under a distance or hybrid model may charge additional special education contracted transportation costs beyond actual services provided but limited to what the school would have paid if they were fully on-site for State Fiscal Year 2021. Transportation contractors are strongly encouraged to provide discounts for fuel savings and other avoided costs related to idle vehicles.

11. Upon approval by the Executive Council, every child who has aged out of special education services for developmental delay under Minnesota Statutes 2019, section 125A.02, during the peacetime emergency established under Executive Order 20-01

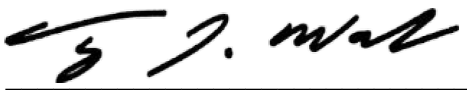
may continue to be eligible for special education services for the duration of the peacetime emergency. A teacher who holds an Early Childhood Special Education license may provide services to students under this provision.

12. Upon approval by the Executive Council, paragraph 29 of Executive Order 20-82 is amended to allow school districts or charter schools to use up to five instructional days at one or more schools as planning days for movement between the various instructional models or for adjusting the current learning model to better meet the needs of students, even if students are not receiving instruction on those days at the impacted school or schools. Any days over five instructional days used for planning may be counted as instructional days upon MDE's approval.

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 November 5, 2020.



Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on November 6, 2020:

Alice Roberts-Davis
Secretary, Executive Council