

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: April 15, 2020
TO: Members of the Senate
FROM: Cory Savino, Fiscal Analyst, and Kathryn Summers, Associate Director
RE: Executive Order 2020-35 (Provision of K-12 Instruction)

Summary of Order Contents

Executive Order (EO) 2020-35, issued on March 30, 2020, suspends in-person instruction of K-12 students and provides limited and temporary relief from certain restrictions and requirements to allow K-12 education to continue using alternative means. The Order was effective upon issuance and will remain in effect through the end of the states of emergency and disaster. The EO is broken down into 10 sections, summarized below, with notable provisions within each section highlighted:

- I. The Order suspends of in-person K-12 instruction for the rest of the school year and requires school buildings to be closed unless restrictions on public gatherings and the use of school buildings are lifted before the end of the school year. The EO applies to all public, nonpublic, and boarding schools.
 - Strict compliance with having at least 75% of students in 'attendance' on any given day for it to count as a day of instruction is waived.
 - In addition to the existing six 'snow days', an additional 13 days or equivalent number of hours are counted as days/hours of instruction.
 - Under existing law, a district may count up to five days of professional development as days of instruction (this may include days used to prepare and provide instruction by alternative modes).
 - Strict compliance with days and hours requirements is waived if a district has a learning plan approved under Section II. In this case, a district with an approved learning plan is considered to be operating an approved alternative education or other innovate program for the remainder of the school year. If a district does not substantially comply with its learning plan, it is subject to forfeiture of State School Aid funds based on a comparison of the number of hours and days of instruction provided to the minimum number of days and hours of instruction required.
 - If a district was offering shared-time courses and is able to offer them through alternative modes of instruction, it may continue to do so.

- II. The EO requires the Michigan Department of Education (MDE) to collaborate with the Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers to develop and distribute a template for a learning plan. (This was due April 3, 2020.) Districts must implement a learning plan by April 28, 2020.

- A learning plan must do the following:
 - Include a description of methods the district will use to provide alternative modes of instruction. If the plan relies on electronic instruction, it must ensure to the extent feasible that pupils have access to a connected device and must not penalize a pupil for his or her inability to fully participate.
 - Include a description of plans to deliver content in multiple ways.
 - Include a budget outline estimating additional expenditures and sources of revenue to pay for that spending.
 - Include a description of methods to notify pupils and parents.
 - Provide for assistance, to the extent feasible, for dual enrollment.
 - Provide or arrange to continue food distribution to eligible pupils.
 - Continue to pay school employees while redeploying staff to provide meaningful work in the context of the plan, subject to collective bargaining agreements.
 - Provide mental health supports to pupils affected by the state of emergency.
 - Provide for the district to support its intermediate district to mobilize disaster relief child care centers.
 - A learning plan may provide for the adoption of a balanced calendar for the remainder of this school year or for the upcoming school year.
 - A district may partner with other districts or intermediate districts if it is unable to implement the learning plan on its own.
 - A district that is not a public school academy (PSA) must have its plan approved by the superintendent of the intermediate district in which it is located. For a PSA, the plan must be approved by the authorizing body of the PSA.
 - Approved plans must be transmitted to the Superintendent of Public Instruction (SPI) and the State Treasurer and must be posted on the district's websites.
 - A district with an approved plan is eligible to receive continued payments from the State School Aid fund for this school year.
 - Nonpublic and home schools are encouraged to offer all students electronic, other remote, or home-based instruction for the remainder of the school year.
- III. The Order allows district employees or contractors into school buildings as necessary to conduct minimum basic school operations consistent with the learning plan. Districts must adopt social distancing practices and other mitigation measures to protect employees and contractors.
- A district may permit parents and guardians of pupils to visit school property for the purpose of obtaining materials and equipment pursuant to the learning plan, using the same social distancing and other mitigation measures required for school employees and contractors.
- IV. Executive Order 2020-35 specifies that learning plans are not required to address accountability and assessment provisions of the Federal Elementary and Secondary Education Act.
- State assessments and measurements are suspended for the remainder of the school year; the suspended assessments include the Michigan Merit Exam, the M-STEP (including the PSAT), the WIDA test for English Language Learners, WorkKeys, Kindergarten Readiness Assessment, and assessments or performance evaluations of teachers and district administrators.

- V. The Order requires districts to implement a process to issue grades to high school seniors, award credits needed for graduation, provide for completion of the Michigan Merit Curriculum, issue diplomas, and reflect continued learning for high school seniors.
- A district may use any of the following methods: award credits and grades for coursework through March 11, 2020; provide an optional final exam or other culminating activity to assess pupil understanding; use a previous learning assessment or portfolio; or offer an interdisciplinary culminating activity that encompasses essential standards missed by pupils due to the closure of schools.
 - Districts must provide seniors who were failing a course as of March 11, 2020, an opportunity to demonstrate learning and to receive credit for the course.
 - The requirement to study civics to receive a diploma is suspended for the remainder of the school year.
- VI. The EO requires districts to provide equal access to alternative modes of instruction to students with disabilities, to the extent practicable.
- Districts must strive in good faith, based on existing resources, technology, training, and curriculum, to provide equal access to alternative modes of instruction to students with disabilities.
 - Districts must comply with guidance from the U.S. Department of Education concerning the delivery of alternative modes of instruction to students with disabilities.
 - Districts are required to make individualized determinations whether and to what extent compensatory services may be needed for pupils after the school closure period ends.
 - Districts are not required to repay Federal special education funds that are unused because of the inability to provide in-person services.
 - The Department of Education and the Department of Civil Rights are encouraged to submit requests to the U.S. Department of Education for interpretation, guidance, flexibility, and waivers on how to deliver instruction and how to deliver direct and consultative-related services without having to reconvene or amend individualized education plans (IEPs); how to complete IEPs online (through either telephone or video conference); and other matters.
 - The EO does not require that an IEP be amended.
- VII. The Order temporarily suspends strict compliance with rules and procedures and permits the SPI to temporarily suspend an MDE rule interpreting or implementing a provision of the Revised School Code to facilitate the EO or other response efforts prompted by the coronavirus disease 2019 state of emergency.
- VIII. The EO temporarily allows the SPI to issue temporary teaching certificates or to renew teaching certificates to in-State and out-of-State qualified individuals who are unable to take appropriate examinations or first-aid classes, and to suspend temporarily certain professional development requirements.
- IX. The Order provides additional implementation provisions, including provisions allowing students to take more than two virtual courses, permitting districts to determine whether their pupils have completed credit without using subject area content expectations and guidelines, removing the requirement for districts to retain pupils in grade 3 if they are not

reading proficiently, suspending language penalizing districts for failing to file reports or employing individuals without valid teaching certificates, allowing districts to operate year-round programming or to start the 2020-2021 school year before Labor Day, and requiring districts to implement the EO in a manner consistent with existing collective bargaining agreements.

X. Section 10 of the Order provides definitions of terms used throughout the EO.

Fiscal Impact

Districts will face some building-related savings with the closure of school buildings for in-person instruction, although those savings will be lessened to the extent child care centers are operating in those buildings. To the extent hourly workers are not paid during the school closures, districts will see additional savings.

It is likely, however, that districts will see increased costs to the extent alternative modes of instruction included in a district's learning plan are greater than the costs that otherwise would have occurred on-site. These types of costs primarily will center on technology, i.e., devices, connectivity, applications, and personnel, among other things.

The Department of Education will experience additional administrative costs to develop and distribute a template learning plan, coordinate plans transmitted to the Department, and implement new teacher certification requirements. Because of the limited time and changes undertaken, there likely will be significant costs to implement the Order. It is currently unknown if these additional costs will be offset by reduced administration of assessments, teacher certification, and other requirements that are suspended.

/mh

c: Christopher Harkins, Director