

## COVID-19: Continuity of Learning for K-12 Students under Executive Order 2020-35

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April 3, 2020

As anticipated, on April 2, 2020, Governor Whitmer issued Executive Order 2020-35 (the "Order") regarding the provision of K-12 education in Michigan for the remainder of the 2019-20 school year. The 17-page order, in short, suspends all in-person instruction of K-12 public, non-public and boarding schools; closes all school buildings; suspends all K-12 sports and other in-person extracurricular activities; temporarily relaxes and waives various provisions of the Revised School Code and School Aid Act requirements and related regulations; and sets forth requirements for districts to include in a Continuity of Learning and COVID-19 Response Plan (a "Plan"). A school district with an approved Plan is eligible to receive continued payments from the State School Aid Fund for the 2019-20 school year. While the Executive Order does not expressly so state, a district shall forfeit continued payments if it fails to create an approved Plan.

A summary of critical deadlines, basic Plan requirements, and other pertinent provisions within the Order is outlined below:

### **Deadlines**

As promised in the Order, on April 3, 2020, the Michigan Department of Education ("MDE") distributed a model template for a Plan, described below. This model template was created in collaboration with the Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers.

The Order requires that all intermediate districts and authorizing bodies be ready to review and approve, or reject Plans by no later than April 8, 2020. A district's Plan must be implemented by no later than April 28, 2020. Notably, the Order does not provide any deadline by which the Plan must be reviewed and approved or disapproved.

### **Plan Requirements, Development & Implementation**

Districts will need to move quickly to develop and seek approval of their plans from their intermediate school districts (for traditional school districts) or authorizing bodies (for public school academies) so Plans can be implemented by no later than April 28. Plans may be created by an individual traditional school district, or jointly between districts via a cooperative agreement. Districts may also contract with one or more providers to assist with implementation of their Plan. The model template for a Plan can be found [here](#). Districts and academies have a lot of flexibility in completing this template, provided their Plans include all of the elements outlined in Part II(B) of the Order, which in pertinent part, include the following:

- A description of the methods that will be utilized to provide "alternative modes of instruction" to students, along with a summary of materials each student and the students' parents or guardians will need to meaningfully access the identified alternative modes of instruction; [1]
- An explanation of the collaboration between district administrators, board members, teachers, and any teacher representatives in creating the Plan;
- The methods that will be utilized to manage and monitor student learning;

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- Confirmation that employees will continue to be paid “while redeploying staff to provide meaningful work in the context of the Plan;”
- Assurance that food will continue to be distributed to all eligible students;
- An explanation of the measures that will be taken to provide mental health support to students affected by the state of emergency prompted by COVID-19; and
- Inclusion of a budget outline and estimated start date of the Plan.

It is also important to note that the Order:

- Requires districts to establish guidelines for students in grade 12 to graduate;
- Permits, but does not require, a school district’s Plan to adopt a “balanced calendar instructional program” for the remainder of the 2019-20 school year and for the 2020-21 school year[2] , and to extend the current school year or begin the 2020-21 school year before Labor Day;
- Requires districts to adopt policies to prevent employees and contractors from entering school premises if they display respiratory symptoms, or have had contact with someone known or suspected to have contracted COVID-19;
- Permits essential employees performing government activities to enter school premises. For more information about the designation of public education employees as critical or essential, please see our previous e-alert on EO 2020-21;
- Allows districts to permit parents and guardians to visit school property to obtain materials and equipment offered pursuant to the district’s Plan, subject to the same access protocols and policy applicable to employees and contractors;
- Permits eligible students to take AP exams using the at-home testing option provided by the College Board. School Districts must facilitate, as practicable, access to information regarding assistance provided by the College Board in completing examination requirements;
- Permits districts to independently make decisions regarding the awarding of credit, the issuance of grades, and the use of pass/fail designations;
- Temporarily suspends strict compliance with rules and procedures outlined under the Revised School Code regarding assessments for the remainder of the 2019-20 school year, such that, Districts will not be required to administer: 1) the Michigan Student Test of Educational Progress (“M-STEP”), or an alternative to M-STEP such as the MI-ACCESS assessment, including the Preliminary Scholastic Aptitude Test (“PSAT”); 2) the “WIDA ACCESS” or “WIDA Alternative ACCESS” assessment to English language learners; 3) the WorkKeys assessment, or any other that assesses a student’s ability to apply reading and math skills in an employment setting; or 4) the Maryland-Ohio observational tool;
- Allows students in grade 11 to take the Scholastic Aptitude Test (“SAT”) portion of the Michigan Merit Examination, during the fall of the 2020-21 school year (as permitted by the College Board);
- Waives and temporarily suspends, for the remainder of this school year, any requirement for assessment or other performance evaluation of teachers and district administrators; and

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- Mandates that districts provide equal access to alternative modes of instruction to students with disabilities for the remainder of the school year. In doing so, districts must comply with guidance from the U.S. Department of Education (“USDOE”), including its Office of Civil Rights and Office of Special Education and Rehabilitative Services. The Michigan Department of Civil Rights has been encouraged to submit requests to USDOE within the next five days for interpretation, guidance on implementation, flexibility, and/or waivers that will allow districts to provide a free, appropriate public education to special education students.

### **Collective Bargaining Considerations**

The Order provides very few, but powerful provisions regarding its effect on any collective bargaining agreement currently in effect. First, under Section II(B)(11) a Plan can only be approved if the district shall “Continue to pay school employees while redeploying staff to provide meaningful work in the context of the Plan, subject to any applicable requirements of a collective bargaining agreement.” Further, the Order states that all districts must implement the Order in a manner that is “consistent” with any collective bargaining agreement.

Notably, the Order does not cite to, amend, or in any way relate to the Public Employment Relations Act (“PERA”), MCL 423.201 *et seq.* and therefore it should be considered as having full force and effect. Accordingly, districts need to be mindful of all required, permissible, and impermissible subjects of bargaining under PERA.

For more information about what the Order means for unionized school employers, please **click here**.

[1] “Alternative Modes of Instruction” allow for the continuation of learning when students are unable to participate in, or receive, in-person instruction, e.g., partnerships with other districts or intermediate districts or community colleges or institutions of higher education; use of online learning; telephone communications; email, virtual instruction, or instructional packets.

[2] A “balanced calendar” means districts can reduce the traditional 12-week summer vacation and more evenly disperse time off for students throughout the year, so long as the 180-day requirement remains in effect.