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Governor Whitmer Suspends In-Person K-12 Instruction for the Remainder of 2019/2020 School Year

4.3.2020

On April 2, 2020, Governor Gretchen Whitmer issued Executive Order No. 2020-35, suspending in-person K-12 instruction for the remainder of the 2019-2020 school year. Governor Whitmer's Executive Order has a wide-ranging impact on public school districts, public school academies (charter schools), teachers and, of course, students and parents.

SCHOOL DISTRICTS & PUBLIC SCHOOL ACADEMIES

By April 28, 2020, public school districts and public school academies must have remote learning plans implemented. The remote learning plans must provide alternative modes of instruction, and must include the methods of instruction. If the plan relies on electronic instruction, the plan must ensure *"to the extent feasible"* that pupils have access to a connected device capable of accessing electronic instruction. Employees of the district must continue to be paid under the remote learning plan and be *"redeployed to provide meaningful work within the context of the plan."* For public school districts, the plan must be approved by the intermediate superintendent in which the district is located. For public school academies, the plan must be approved by the academy's authorizer.

So long as the remote learning plans are implemented, the Executive Order temporarily suspends statutory requirements on school districts and public school academies to provide 1098 hours and 180 days of in-person instruction as a condition to receiving state-aid funding. In addition, the 80% average daily attendance requirement has been suspended.

The statutory allotment of six "unforeseen circumstance days" (e.g., snow days) that is given to each school district or public school academy has been increased by 13 additional days for instruction not provided due to COVID-19 closures. A district may add an additional five days for the preparation of its remote

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learning plan.

STUDENTS & PARENTS

All decisions regarding the issuing of grades and awarding credit toward graduation for high school pupils will be made at the district level. Students in grade 12 will be awarded the credits needed for graduation and issued diplomas based on parameters set by the Executive Order, but chosen by the district.

Students enrolled in advanced placement (“AP”) courses that are eligible to take examinations for AP courses administered by the College Board must be permitted to take the examinations using the at-home testing option provided by the College Board.

All standardized testing will be postponed until next school year. Pupils scheduled to be administered the Michigan Merit Exam (“MME”), Scholastic Aptitude Test (“SAT”), and Preliminary Scholastic Aptitude Test (“PSAT”) will now be scheduled during the school day in the fall of the 2020-2021 school year. The Michigan Student Test of Education Progress (“M-STEP”) is temporarily suspended for the remainder of the 2019-2020 school year.

Students who receive special education services have a right to equal access to the alternative modes of instruction as set forth in each district’s remote learning plan. The executive order does not, however, require that a pupil’s IEP be amended.

While private school students and homeschool students are being “encouraged” to engage in virtual learning, this order does not apply because these students do not receive state funding subject to the State Aid Act.

Butzel Long’s Education Practice Group stands ready to provide advice on legal compliance and interpretation of the Executive Order. If you have questions about this Alert or any aspect of the K-12 educational legal issues, please contact your regular Butzel Long attorney or any of the attorneys identified below.

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