

# LegislativeUpdate

Michigan Association of Superintendents & Administrators | May 22, 2020



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## Summary

Yesterday the Michigan Court of Claims ruled in Gov. Gretchen Whitmer's favor in a lawsuit filed by Republican leaders in the Legislature challenging her emergency powers and executive orders. This confirms the governor's authority to issue emergency executive orders under the Emergency Powers of the Governor Act and concludes legislative Republican arguments to the contrary are "meritless." This means that the governor can continue to keep the state under a state of emergency without legislative approval.

However, the ruling also stated that the governor lacked authority to declare a new 28-day declaration under the 1976 Emergency Management Act without legislative approval. This distinction has been the main point of contention between Ms. Whitmer, Sen. Shirkey, and Speaker Chatfield. Senate Majority Leader Mike Shirkey (R-Clarklake) and Speaker Lee Chatfield (R-Levering) said they will appeal the ruling.

This decision is a fourth time that a Court of Claims judge ruled in favor of Whitmer in lawsuits challenging her orders. The court also yesterday dismissed a lawsuit challenging Whitmer's executive order that extends the government's response time to Freedom of Information Act requests.

The Legislature is far from resuming normal operations, but lawmakers have begun holding more regular hearings and are working on legislation related to COVID-19 and the state's reopening and recovery.

As always, please [contact MASA](#) with any questions or concerns.

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## **Your Voice is Needed**

By now you are keenly aware of the fact that schools will be facing massive budgetary shortfalls due to decimated state revenue. We face the very real possibility of a large per pupil cut in the current fiscal year. Which is why we need your voice in our advocacy campaign. Educators across Michigan will be called upon to take part in the Our Children, Our Future Campaign to advocate for recovery dollars for Michigan's schools. Congress has passed the CARES Act, which sent nearly \$400 million to Michigan, but the reality is, we will need \$3-5 billion over the next three fiscal years to avoid catastrophic cuts to education in every community in our state.

We've begun the campaign and ask that you please take the first step of contacting your member of Congress using our Voter Voice portal. [Please take a minute to send this letter](#). As always, a more customized message is better, so edit the text to tell your story and what a \$700 per pupil cut looks like for your district and community.

Another way you can help is by asking your Board of Education to pass a resolution urging action from Congress. Once they've done this, please send a copy to your local paper, out on your email lists, and to [masbgov@masb.org](mailto:masbgov@masb.org) so that we can track them with MASB. Thanks to MASB for supplying this [sample resolution](#).

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## **Senate Education**

The Senate Education committee met this week, and we again heard testimony on two bills that attempt to codify portions of executive orders regarding school aid and the school code to revise requirements in the wake of the COVID-19 pandemic.

The two bills before the Senate Education Committee, SB 873 and SB 875, both sponsored by Sen. Wayne Schmidt (R-Traverse City), are bills to facilitate a larger discussion of additional statutory

changes that need to be made as a result of the pandemic, but the conversation quickly turned toward a critique of public schools and Continuity of Learning (COL) Plans. Senator Lana Theis (R-Brighton) stated that she has been reviewing COLs and "not finding a lot of rigor." She also said it was her understanding that several districts were just teaching mastery of existing subjects and no new material.

The Great Lakes Education Project (GLEP) testified during committee and implied that our public schools are failing our students. To summarize, their remarks questioned the quality of instruction our teachers are providing and that we are only providing "busy work" in our Continuity of Learning Plans.

You can read MASA's statement [here](#).

These bills are scheduled for another hearing next week, and we will continue to advocate for the hard-working public-school educators of our state.

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## **Senate Health Policy Committee Discusses Childcare Center Regulations**

On Wednesday, the Senate Health Policy Committee held a hearing to discuss codifying two of the governor's Executive Orders into law. EO 2020-39 suspended certain restrictions and licensing requirements for emergency medical services and EO 2020-83 addressed emergency childcare centers.

The childcare center requirements are addressed in SB 885, sponsored by Sen. Peter MacGregor (R-Rockford), who indicated that his intention with the legislation is to start a discussion on what worked and what didn't with Ms. Whitmer's COVID-19 response.

SB 885 would allow an employer, a school district, or a nonpublic school to establish and maintain a disaster relief childcare center without a license from the Department of Licensing and Regulatory Affairs (LARA) until June 1, 2020 or until the end of the state of emergency. The bill would also require LARA to promulgate rules for disaster relief childcare centers and require the health screenings of employees, among other things.

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## **House Passes Do-Not-Resuscitate Order Package**

This week, the House reported the package of bills addressing do-not-resuscitate (DNR) orders this week. These bills are a reintroduction of Senate bills from last session that passed the Senate unanimously but were held up in the House during lame duck.

As a refresher, HB 5417, 5418, and 5419 collectively would require that DNR orders for minors with advanced illnesses be followed by schools. The bills are sponsored by Rep. Rebekah Warren (D-Ann Arbor) and Rep. Daire Rendon (R-Lake City).

HB 5417 amends the Michigan Do-Not-Resuscitate Procedure Act to allow a parent on behalf of his or her minor child to execute a DNR order. This would apply to children under the age of 18 who have been diagnosed by an attending physician to have a medical or surgical condition with significant functional impairment that is not reversible by curative therapies, and that is anticipated to progress toward death despite attempts at curative therapies or modulation. The DNR would have to be signed and dated by a child's parents, attending physician, and two witnesses at least 18 years of age.

HB 5418 adds new sections in the Revised School Code to establish procedures to file a child's DNR order at their school. The administrator of a school or their designee who received a copy of a DNR would have to ensure the form is placed in a file created specifically for such orders or forms. The school administrator is also required to inquire at the beginning of each school year the status of a DNR if a pupil had one the previous year. The administrator or designee would also need to provide notice of the DNR to each teacher or school employee who provides instructional or non-instructional services directly to the student.

Additionally, the legislation would specify that if a school administrator, teacher or other school employee in good faith administers a comfort care measure or refused to perform resuscitation in compliance with a DNR, they would not be liable in a criminal action or for civil damages as a result of an act or omission in the administration of the comfort care measure, the refusal to perform resuscitation, or the provision of medical treatment. A comfort care measure is a treatment designed by the physician issuing a DNR order for a student to ensure the student's mental and physical comfort in circumstances in which resuscitation is not attempted. It would not include the routine provision of medications, treatment, or procedures. A school district, intermediate school district, public school academy, nonpublic school, member of a school board, or director or officer of a public-school academy or nonpublic school would not be liable for damages.

The bills have now been referred to the Senate Committee on Families, Seniors and Veterans.

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## **U.S. Circuit Court of Appeals Vacates Detroit Right-to-Read Lawsuit**

Last week, the state settled a lawsuit with the student-plaintiffs in the Detroit literacy lawsuit. In 2016, seven Detroit students sued the state of Michigan over the conditions of their schools advocating that the U.S. Constitution guarantees students the right to achieve literacy. In 2018, a U.S. District judge in Detroit rejected that claim. However, in April, the U.S. 6th Circuit Court of Appeals panel reversed his decision, ruling that because literacy is crucial to participating in democracy, it is a constitutional right. Although she rejected the claim that the state was directly responsible, Gov. Whitmer indicated support for the premise of the lawsuit by approving a settlement last week that acknowledges the plaintiffs' grievances and the state's responsibility to address them.

**New this week**, a majority of judges on the Sixth Circuit Court of Appeals voted to rehear the lawsuit. This vacates the panel's ruling, suspends any associated mandates and puts the case back on the docket as pending appeal. The full appeals court includes 11 judges appointed by Republican presidents and five appointed by Democrats. This process of a federal appeals court undertaking a review of its own judges' opinion is a rare procedural step known as an "en banc."

Additionally, the Legislature has asked to intervene in the case, arguing that the court's ruling was infringing on its authority to regulate and to fund public education in Michigan. That request is being considered by the court. Lawmakers also asked for the case to be heard by the larger group of judges, saying that the 2-1 decision was an attack on federalism.

Further, the Tennessee Attorney General's Office filed an amicus brief on behalf of 10 states — Tennessee, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Ohio, and Texas — asking the 6th Circuit Court to allow the Detroit case to be heard by the full panel. It is not immediately clear how this decision will impact the settlement.

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## **Useful Resources**

As we face several unknowns for the upcoming school year, one tool that we can observe among many are what other schools around the world are doing to reopen in-person instruction safely. A few countries have reopened classrooms and provide early examples of what our "new normal" might look like for next school year.

The Learning Policy Institute compiled [health and safety guidelines from other countries](#) for the reopening of their schools.

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## **MDE to Request Federal Waivers for the Summer Food Service Program**

On Wednesday, the Michigan Department of Education (MDE) announced that they will request a federal waiver to allow all Summer Food Service Program (SFSP) participating sponsors the option to serve and receive reimbursement for open meal sites that do not meet the 50 percent or more free or reduced-price meal eligibility or census map eligibility requirement. Communities with 50 percent or more free or reduced-price meal eligibility receive services without the need for a waiver.

The waiver also requests that all participating SFSP sponsors to be permitted to continue monitoring activities of the program offsite and to allow MDE the option to conduct monitoring offsite.

If you are currently a SFSP sponsor, you do not need to request exceptions from MDE. As soon as the state receives the waiver from the US Department of Agriculture, MDE will issue additional guidance.

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## **ICYMI: MDE Updates**

**MEMO #COVID-19-057**

**UPDATED** *Guidance for Compliance with the Individuals with Disabilities Education Act (IDEA) and the Michigan Administrative Rules for Special Education (MARSE)*

Due to the COVID-19 pandemic, the governor ordered the closure of all schools for the remainder of the 2019-2020 school year. The Michigan Department of Education Office of Special Education (MDE OSE) has updated current guidance to address additional substantive requirements of the IDEA and MARSE. [Read the full memo.](#)

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