



**GOVERNOR'S EO UNCONSTITUTIONALLY OUTLAWS HOME EDUCATION AND USURPS THE STATE BOARD OF EDUCATION'S AUTHORITY OVER PUBLIC SCHOOLS**

Michigan Governor Gretchen Whitmer recently issued Executive Order (EO) 2020-35 regarding education of K-12 school children for the remainder of the 2019-2020 school year. The governor clearly has authority to close school buildings. MCL 10.31(1). Two aspects of her order, however, are unconstitutional:

**1. HOME EDUCATION BANNED:** The clear language of paragraph 1.A. of the EO bans home-schooling for the remainder of this school year.

I.A. ... [I]n-person instruction for pupils in kindergarten through grade 12 (“K-12”) is suspended for the remainder of the 2019-2020 school year ...” and “[S]ection I.A applies to all ... non-public ... schools in the state.

Michigan law defines home schools as nonpublic schools. The EO, therefore, bars parents from directly teaching their children at home. While this may be an unintended consequence of faulty drafting, the EO’s plain language bans all “in-person instruction” of all children for the rest of this school year.

The Governor has no authority to direct nonpublic schools (i.e., private schools and home schools) to operate their educational programs and processes in any particular way. Further, parents have a fundamental constitutional right to raise and educate their children. U.S. Constitution 1<sup>st</sup> and 14<sup>th</sup> Amendments; Michigan Constitution Article 1, Sections 2 and 4; MCL 380.10.

The Great Lakes Justice Center calls upon Governor Whitmer to correct this unconstitutional action and assure parents in Michigan that they may continue to safely home school their own children while the EO is in effect.

**2. GOVERNOR WHITMER'S EO USURPS THE AUTHORITY OF THE STATE BOARD OF EDUCATION OVER PUBLIC SCHOOLS:** Article 8, Section 3 of the Michigan Constitution assigns “Leadership and general supervision over all public education” to the State Board of Education (Board). The Governor overstepped her authority by ordering public schools to operate in a certain

manner, to mandate educational credit, etc. To be sure, the Governor can order public school buildings closed. Under Michigan’s Constitution, however, anything beyond that action falls under the authority of the Board.

The Board is a constitutionally created body, elected state-wide, and not accountable to the Governor. It has its own constitutional and statutory duties and responsibilities. Article 8, Section 3 also states that the Board, “shall serve as the general planning and coordinating body for all public education.”

Likewise, State statutes provide that sole authority over public schools rests with the Board. MCL 388.1007 states that the Board “may make such ordinances, bylaws and regulations as it deems proper for . . . the operations of the state institutions (i.e., public schools) under its control.” No authority is given to the Governor. MCL 388.1009 states that the Board “has leadership and general supervision of all public education . . .” and “The board serves as the general planning and coordinating body for all public education.” Again, no authority is given to the Governor. MCL 388.1011 requires the Board to “report to the legislature . . .” as to its finances. Again, no authority is given to the Governor.

The Governor holds no legal authority to enact the expansive educational orders mandated in EO 2020-35. Declaring an emergency to deal with a public health crisis does not bestow control over the public-school system to the Governor. When officials improperly exercise power beyond that provided in law it violates principles of good governance and the Rule of Law.

The Great Lakes Justice Center calls upon Governor Whitmer to rewrite the EO consistent with the Constitution and laws of the State of Michigan. We further call upon the State Board of Education to carry out its prescribed constitutional and statutory duties.

**THE GREAT LAKES JUSTICE CENTER**

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