

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1996-7

388.994 Transfer of administrative powers and duties of state board of education to superintendent of public instruction by type II transfer; retention of statutory policy making powers and duties by state board of education.

WHEREAS, Article 5, Section 2 of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article 8, Section 3 of the Constitution of the State of Michigan of 1963 provides that the leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a State Board of Education; and

WHEREAS, as explained in the Address to the People accompanying Article 8, Section 3, the State Board of Education was to provide its constitutional leadership by being a state level policy-making body which was to emphasize two fundamental principles: (1) the concern of all people in the educational processes as a safeguard for democracy, and (2) greater public participation in the operation of educational institutions; and

WHEREAS, the State Board of Education provides its constitutional general supervision by developing and creating general guidelines and standards by which public education is provided; and

WHEREAS, Article 8, Section 3 of the Constitution of the State of Michigan of 1963 provides that the State Board of Education serves as the general planning and coordinating body for all public education, including higher education, and advises the legislature as to the financial requirements in connection therewith; and

WHEREAS, as reflected in the Address to the People accompanying Article 8, Section 3, the State Board of Education exercises its constitutional general planning and coordinating authority by being the unifying and coordinating force for education within the state, by receiving and considering information from all levels of public education, and by advising local school boards, governing boards of colleges and universities and the legislature as to the total needs of education in this state; and

WHEREAS, Article 8, Section 3 of the Constitution of the State of Michigan of 1963 provides that the Superintendent of Public Instruction is to be appointed by the State Board of Education and is responsible for executing its policies; and

WHEREAS, Article 8, Section 3 of the Constitution of the State of Michigan of 1963 provides that the Superintendent of Public Instruction is the principle executive officer of a Department of Education which shall have powers and duties provided by law; and

WHEREAS, Executive Order 1996 - 11 transferred all the administrative statutory powers, duties, functions and responsibilities of the State Board of Education as administrative head of the Department of Education to the Superintendent of Public Instruction; and

WHEREAS, Article 8, Section 3 of the Michigan Constitution of 1963, section 14 of Act No. 287 of the Public Acts of 1964, as amended, being section 388.1014 of the Michigan Compiled Laws, and section 305 of Act No. 380 of the Public Acts of 1965, as amended, being section 16.405 of the Michigan Compiled Laws, provide that the Superintendent of Public Instruction is the principal executive and administrative officer of the Department of Education; and

WHEREAS, the Department of Education was created as an executive department of state government by section 300 of Act No. 380 of the Public Acts of 1965, being section 16.400 of the Michigan Compiled Laws; and

WHEREAS, Article 5, Section 3 of the Michigan Constitution of 1963 provides that the head of each principal department shall be a single executive unless otherwise provided by the constitution or by law; and

WHEREAS, it is in the interest of the efficient and effective administration of government for an executive department to be headed by a single executive; and

WHEREAS, through the effects of this Order the State Board of Education will be alleviated from many statutory administrative functions which unnecessarily burden the time of the State Board of Education, thereby allowing the State Board of Education to continue its esteemed and focused leadership, general supervision, planning, and coordinating for public education.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. All of the administrative statutory powers, duties, functions, and responsibilities of the State Board of

Education set forth in the following provisions of the Michigan Compiled Laws:

- a. 141.1201 et seq. regarding procedures for the state take-over of a district in financial distress;
- b. 380.3 regarding the designation of service area boundaries for area vocational-technical programs;
- c. 380.11b regarding a report to the legislature on legislative mandates;
- d. 380.404b regarding the approval of voting district boundaries for first class school districts;
- e. 380.451(1) regarding the definition of "operation costs" for purposes of first class tax levies;
- f. 380.502(5) regarding the authority to suspend the power of authorizing bodies to authorize public school academies;
- g. 380.503(3) and 380.513(4) regarding the receipt of copies of contracts with public school academies by authorizing bodies;
- h. 380.516a(2) regarding the authority to reject public school academy contracts or incorporations, the authority to delay state aid, and the authority to mediate solutions and enforce laws;
- i. 380.517(3) regarding the ability to revoke public school academy contracts under specified conditions;
- j. 380.605 regarding the ability to determine the reorganization of consolidated intermediate school districts under limited circumstances;
- k. 380.605(1) regarding responsibilities in local school district reorganization;
- l. 380.626 regarding intermediate school districts reports' of local school district boundary changes;
- m. 380.662(7) regarding the receipt of election canvass results;
- n. 380.671(1), 684(2), 673, 688, 690 and 380.4(1) regarding the criteria for establishing Regional Educational Media Centers and area vocational technical programs;
- o. 380.692(3) regarding approval of intermediate school district charter building authorities;
- p. 380.701(3) regarding the approval of intermediate school district consolidation petitions;
- q. 380.702(1) regarding the approval of intermediate school district annexation elections;
- r. 380.702(3) regarding the receipt of notice of successful annexations and appointment power for new intermediate school district boards;
- s. 380.703(5) regarding the approval of the dissolution of an intermediate school district;
- t. 380.703(7) regarding the notice of an appointment of an intermediate school district's new board after dissolution;
- u. 380.852 and 380.854 regarding the receipt of notice and approval of local school district consolidations;
- v. 380.901(1) regarding the approval of local school district annexations;
- w. 380.902 regarding the receipt of notice of the annexation of local school districts;
- x. 380.922 regarding the approval of annexation of nonoperating districts;
- y. 380.932 regarding the approval of the division and attachment of local school districts;
- z. 380.933 regarding the receipt of notice of local school district boundary changes;
- aa. 380.971 regarding the approval of property transfers among local districts;
- bb. 380.1157 regarding service training for limited English proficiency and the bilingual education teachers' endorsement;
- cc. 380.1169(2) regarding the training of trainers for Acquired Immunization Deficiency Syndrome (AIDS) education;
- dd. 380.1225(5)-(10) regarding the approval of financial notes under certain circumstances;
- ee. 380.1226 regarding the receipt of county assessment rolls;
- ff. 380.1233(2) regarding the receipt of lists of uncertified teachers teaching in constituent districts from intermediate school districts;
- gg. 380.1251(2) regarding the authority to require reports about psychology programs;
- hh. 380.1260(1) regarding the approval of deed restrictions of public school property;
- ii. 380.1272c(b) regarding the approval of noncompliance with breakfast and lunch guidelines;
- jj. 380.1279c regarding assurance that the Michigan Educational Assessment Program (MEAP) does not test values or attitudes;
- kk. 380.1280 (3), (4), (5), (6), (7), (9), (10), (12) regarding the development and distribution of accreditation standards, sanctions for unaccredited schools, and annual reviews;
- ll. 380.1281 regarding duties of supervision over specific local school districts and public school academies and intermediate school districts, including their observation of laws, the examination and audit of official records and accounts, and the authority to compel an accounting;
- mm. 380.1297(3) regarding the approval of the operation and capital outlay costs for schools of the federal government;
- nn. 380.1298 regarding the approval of the attachment of land for educational purposes for federal land;
- oo. 380.1406 regarding the approval of high school eligibility to receive tuition;
- pp. 380.1411 regarding the approval of tuition for transportation costs to vocational-technical schools

under certain circumstances;

- qq. 380.1474 regarding the annual publication and distribution of a college equivalent course directory;
- rr. 380.1531 regarding the determination of requirements for licenses and certificates for teachers;
- ss. 380.1532(4), (5) regarding the nullification of teacher certificates for specified reasons;
- tt. 380.1535 regarding the confirmation or rejection of teacher certificates;
- uu. 380.1535a (1), (2), (3), (4), (7) regarding duties involving teachers convicted of certain crimes;
- vv. 380.1539a regarding duties involving school administrators convicted of certain crimes;
- ww. 380.1539b regarding duties involving persons holding certification convicted of certain crimes;
- xx. 380.1603 regarding the approval of the joint establishment by school districts of community colleges;
- yy. 380.1605(1) regarding the approval of the discontinuation of a community college;
- zz. 380.1702(3), (4) regarding oversight of local school districts and public school academies not providing special education services or those needing waivers;
- aaa. 380.1711(1)(a) regarding the approval of intermediate school districts' special education plans;
- bbb. 380.1711(1)(h) regarding the receipt of intermediate school districts' reports of the failures of constituent districts to comply with special education administrative rules;
- ccc. 380.1711(1)(i) regarding the approval of intermediate school districts' special education contracts;
- ddd. 388.712 regarding the receipt of petitions for the declaration of an emergency requiring district reorganization;
- eee. 388.715 regarding the receipt of a report by the state committee on reorganization;
- fff. 388.716 regarding the publication of a report by the state committee on reorganization and the determination of whether an emergency exists;
- ggg. 388.717 regarding the reorganization of a district found to be in an emergency;
- hhh. 388.851 et seq. regarding the construction of school buildings;
- iii. 388.1010(a) and 388.1008b regarding the jurisdiction and control of the Michigan Schools for the Deaf and Blind and the acceptance of gifts, grants, and bequeaths for the schools;
- jjj. 388.1010(a) and 395.151 et seq. regarding the jurisdiction and control over the State Technical Institute and Rehabilitation Center at Pine Lake;
- kkk. 388.1010(b) regarding the regulation of school bus transportation, the review of annexation or attachment of nonoperating districts, and the hearing of appeals regarding school boundary alterations;
- lll. 388.1010(c) regarding the inspection of educational corporations;
- mmm. 388.1014a regarding the deposit and maintenance of records of nonoperating education agencies;
- nnn. 388.1008a(2) regarding the authorization of the taking of necessary action to comply with a specific federal grant program (Higher Education Act of 1965 (20 USC 1001 et seq.));
- ooo. 388.1031 et seq. regarding the authorization of the taking of necessary action to comply with a specific federal grant program (Elementary and Secondary Act of 1965 (20 USC 821)) and the use of federal funds for research, and reports to the legislature;
- ppp. 388.1041 regarding the authorization of the taking of necessary action to comply with specific federal grant programs (Television Broadcasting Facilities Act of 1962 (47 USC 391 et seq.) and National Defense Education Act of 1958 (20 USC 541 et seq.));
- qqq. 388.1061 regarding the authorization of the taking of necessary action to comply with a specific federal grant program (National Funding of the Arts and Humanities Act of 1965 (20 USC 951 et seq.));
- rrr. 388.1701(1) regarding the requirement of intermediate school districts filing of pupil membership counts in accordance with administrative rules;
- sss. 388.1704a(2), (8)-(9) regarding the requirement to develop high school proficiency tests;
- ttt. 389.11, 389.31(1), 389.35a(1)(a), and 389.51(2) regarding the approval of community college districts and tax rates prior to submission to voters;
- uuu. 389.21, 389.41(2), and 389.61(2) regarding the approval of community college annexation proposals prior to submission to voters;
- vvv. 389.71 regarding the approval of petitions to establish community colleges;
- www. 389.105(4) regarding the designation of territory outside of a community college district to become part of its vocational-technical service area;
- xxx. 389.109(2) regarding the approval of a community college name;
- yyy. 389.123(b) regarding the approval of tuition waivers in exchange for educational services rendered to community colleges;
- zzz. 389.124(a) regarding minimal requirements for a community college administrator or director;
- aaaa. 389.143 regarding the approval of the community college accounting system, the filing of audits, and inspection of books;
- bbbb. 390.502 regarding the designation of a reciprocal agency to enter into agreements with other states;

cccc. 390.974(1)(b) regarding the determination of which General Educational Development programs are sufficient for the state competitive scholarship program;

dddd. 390.977 regarding the designation of institutions that can receive state competitive scholarships;

eeee. 390.991-992 regarding the designation of the independent colleges and universities that can receive tuition grants;

ffff. 390.1021 regarding the administration of and reporting about the allied health degree program;

gggg. 390.1152(d) regarding the designation of vocational schools eligible to receive student loans;

hhhh. 390.1283(d) regarding the designation of eligible post-secondary institutions for participation in the Part Time, Independent Student Grant Program;

iiii. 390.1323 regarding the designation of graduate and professional schools eligible to participate in the Michigan Graduate Work-Study Program;

jjjj. 390.1373 regarding the designation of post-secondary schools eligible for the Michigan Work-Study Program;

kkkk. 390.1403 regarding the designation of eligible post-secondary schools for the Michigan Educational Opportunity Grant Program;

llll. 390.1428(1) regarding the independent college/universities recognized on the state level as criteria to terminate Michigan Educational Trust Act contracts;

mmmm. 395.21, 395.31 et seq., 395.1 et seq., and 388.805 regarding the transfer of authority of the abolished state board of control for vocational education which includes the authority to accept and disburse federal funds for specific federal grant programs (Promotion of Vocational Education Act (20 USC 11 et seq.); and Federal Funds for Vocational Education (20 USC 15aa et seq. and 20 USC § 2301 et seq.);

nnnn. 395.84 regarding the provision of the vocational rehabilitation services;

oooo. 395.86 regarding the authorization to cooperate with the federal government to receive federal funds for such purposes;

pppp. 395.88 regarding the use of gifts and bequeaths for rehabilitation act purposes;

qqqq. 395.101-102 regarding the issuance, renewal, and revocation of temporary and permanent proprietary school licenses;

rrrr. 395.102a(2) regarding the receipt of reports and the collection of fees from proprietary schools;

ssss. 395.102a(3) regarding the exercise of jurisdiction and control over proprietary schools;

tttt. 395.102b regarding the receipt of evidence of surety and indemnification from proprietary schools;

uuuu. 395.123(6) regarding the authority to adjust fee schedules for solicitor permits for private schools;

and

vvvv. 450.177 et seq. regarding the supervision, inspection, and visitation of educational corporations, are hereby transferred to the Superintendent of Public Instruction by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The State Board of Education shall retain its policy making authority with regard to these statutory provisions by determining the policies, if any, on which the administration of these provisions shall be based.

2. All of the statutory rule making powers, duties, functions, and responsibilities of the State Board of Education set forth in the following provisions of the Michigan Compiled Laws:

- a. 38.71-72 regarding teachers certified in accordance with administrative rules;
- b. 257.1809 regarding the regulation of and administrative rule authority over pupil transportation;
- c. 380.5(2) regarding the definition of pupil membership pursuant to administrative rules;
- d. 380.516a(1) regarding administrative rule making authority involving public school academy applications, the application process, basic contract terms, and enforcement;
- e. 380.517(1)-(2) regarding the recognition that public school academies are their own fiscal agent;
- f. 380.622(1) regarding the approval of intermediate school district code accounts;
- g. 380.1153(3) regarding administrative rules defining membership for intermediate school district bilingual education programs;
- h. 380.1215(1) regarding the establishment of fund designations for general funds;
- i. 380.1172 regarding administrative rules regulating personality testing;
- j. 380.1246(2) regarding administrative rules for continuing education for administrators;
- k. 380.1251(1) regarding psychology school personnel administrative rules;
- l. 380.1252(1) regarding the certification of certain nursing services and administrative rules for certification;
- m. 380.1281(1) regarding administrative rules authority over safety;
- n. 380.1281(3) regarding waivers from compliance with administrative rules under certain circumstances;
- o. 380.1284(3) and (6) regarding administrative rules defining the length of the school term and the

minimum number of days and hours for State Aid purposes;

- p. 380.1288(2) regarding administrative rules requiring protective eye devices;
- q. 380.1296 regarding administrative rules to provide auxiliary services;
- r. 380.1301(2), (4) regarding administrative rules regarding pregnant persons;
- s. 380.1311(1) regarding administrative rules for classifying children as handicapped;
- t. 380.1322(1) regarding administrative rules for pupil transportation;
- u. 380.1333(6) regarding administrative rules for the use of school buses for nonschool purposes;
- v. 380.1335 regarding administrative rules for the licensing and regulation of boarding schools;
- w. 380.1701 regarding the creation and submission of a state special education plan and administrative rules therefore;
- x. 380.1702 regarding the waiver of special education rules under emergency circumstances;
- y. 380.1703(1), (3) regarding administrative rules promulgated for special education personnel;
- z. 380.1711(1)(c) regarding administrative rules for special education personnel;
- aa. 380.1741; 380.4(2) regarding administrative rules for special education membership for State Aid purposes;
- bb. 380.1751(2)(c) regarding administrative rules for the local district contribution of special education funds;
- cc. 380.1761 regarding administrative rules for reimbursement of special education boarding costs;
- dd. 388.1015 and 388.1010 regarding administrative rule making authority to carry out the authority vested by the State Board Organizational Act;
- ee. 388.1661a regarding administrative rules about vocational education consortiums for State Aid purposes;
- ff. 388.1681(3) regarding administrative rules about Regional Educational Media Centers;
- gg. 388.1701(6) regarding the waiver of the forfeiture of funds if the alternative scheduling of a kindergarten is approved;
- hh. 388.1701(7)-(11) regarding the waiver of the 180 day requirement for experimental school years;
- ii. 388.1701(3) regarding administrative rules defining school days and clock hours;
- jj. 395.83 regarding the authority to administer the vocational rehabilitation act, including employment of staff;
- kk. 395.84 regarding the collection of fees and promulgation of rules for the rehabilitation act;
- ll. 395.102a(1) regarding the inspection of proprietary schools and administrative rules authority; and
- mm. 397.136 regarding administrative rules involving the state library network,

are hereby transferred to the Superintendent of Public Instruction by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The State Board of Education shall retain its policy making authority with regard to these statutory provisions by determining the policies, if any, on which the rules shall be based.

3. In addition to, or consistent with all of the statutory policy making powers, duties, functions, and responsibilities reserved to the State Board of Education in paragraphs one (1) and two (2) above, all the statutory policy making powers, duties, functions, and responsibilities set forth in the following provisions of the Michigan Compiled Laws:

- a. 380.7(4) regarding the definition of vocational education;
- b. 380.501 regarding the recognition of the constitutional power of the State Board of Education with regard to public school academies;
- c. 380.501a and 380.511a regarding an annual report to the Legislature on public school academies;
- d. 380.513(6)(j) regarding that public school academies' contracts must have a list of legal remedies for noncompliance that includes reference to the State Board of Education's authority;
- e. 380.517a regarding a report to the legislative education committees on public school academies;
- f. 380.614(3) regarding the authority to fill vacancies on intermediate school district boards;
- g. 380.623 regarding the performance of State Board of Education designated duties by intermediate school districts;
- h. 380.1229a regarding the limitations involving the hiring and removal of the Superintendent of Public Instruction;
- i. 380.1233(1) regarding the defining of the counselor endorsement;
- j. 380.1233b(1) regarding the designation of subject areas for alternative teacher certification;
- k. 380.1277(1)-(2) regarding school improvement plan criteria;
- l. 380.1277(4) regarding the annual review of school improvement plans and a legislative report on school improvement plans;
- m. 380.1278 regarding the development and implementation of the model core curriculum;

- n. 380.1279(2), (8), (9), (10), (11) regarding the development of the high school proficiency tests;
- o. 380.1280(3) and (8) regarding the approval of accreditation standards;
- p. 380.1312(9) regarding the creation of a list of alternatives to the use of corporal punishment;
- q. 380.1525(2)-(4) regarding the approval of state funds for specific professional development programs;
- r. 380.1531a regarding the determination of positions in state agencies requiring valid teaching certificates;
- s. 380.1531c regarding the administrative rules to approve fast track teacher preparation;
- t. 380.1565 regarding guidelines for silent meditation;
- u. 380.1809 regarding penalties for defrauding approval of employment status;
- v. 388.1009 regarding the recognition of the State Board's constitutional authority and the conducting of research studies about general public school problems;
- w. 388.1009a regarding the appointment of the special education advisory committee;
- x. 388.1010(d) and 390.911 regarding the appointment of the State Board for Public Community and Junior Colleges;
- y. 388.1011 regarding a report to the Legislature about State Board of Education operations and the financial requirements of public schools;
- z. 388.1043 regarding the appointment of an advisory committee about the use of educational television;
- aa. 388.1093 regarding the appointment of members to an advisory board about gifted students;
- bb. 388.1313 regarding the appointment of members to the Career Education Advisory Committee;
- cc. 388.1315 regarding the development of guidelines involving career education programs;
- dd. 388.1661a(2) regarding the development of guidelines for defining administrative costs for reimbursement in vocational education;
- ee. 388.1699(1) regarding funds allocated to districts to implement the State Board of Education comprehensive master plan for math and science;
- ff. 388.1707f(12) regarding funds allocated to districts meeting State Board of Education adult education guidelines;
- gg. 380.653 regarding the performance of State Board of Education duties, including reporting, by intermediate school district superintendents;
- hh. 390.505 regarding annual reviews of reciprocal agreements for fiscal effects;
- ii. 395.84(6) and 395.89 regarding the forwarding of biennial reports to the Governor and the Legislature regarding the rehabilitation act; and
- jj. 395.85 regarding annual recommendations about the fiscal demands of the rehabilitation act, shall remain with the State Board of Education.

4. To the extent the transfers set forth in paragraph one (1) and two (2) above are affected by the provisions of section 14 of Act No. 287 of the Public Acts of 1964, as amended, being section 388.1014 of the Michigan Compiled Laws, all of the statutory administrative powers, duties, functions and responsibilities transferred to the State Board of Education by section 14 are hereby transferred to the Superintendent of Public Instruction by a Type II transfer as defined by section 3 of Act No. 380 of the Public Acts of 1965, as amended, being section 16.103 of the Michigan Compiled Laws.

5. Nothing in this Executive Order should be construed to diminish the constitutional authority of the State Board of Education to provide leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, and its authority to serve as the general planning and coordinating body for all public education including higher education, and to advise the legislature as to the financial requirements in connection therewith.

6. The Superintendent of Public Instruction, in consultation with the State Board of Education, shall provide executive direction and supervision for the implementation of the transfers. The Superintendent of Public Instruction shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

7. All records, personnel, property and funds used, held, employed or to be made available to the State Board of Education for the activities transferred are, to the extent necessary, hereby transferred to the Superintendent of Public Instruction as administrative head of the Department of Education.

8. All rules, orders, contracts, and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or rescinded.

9. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by the Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

10. If a court or other entity with proper jurisdiction finds any portion of this Order to be invalid, such

invalidity shall not affect the remaining portions of the Order which can be given effect without the invalid portion. Any portions found invalid shall be severable from the remaining portions of this Order.

In fulfillment of the requirement of Article 5, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective July 1, 1997.

History: 1996, E.R.O. No. 1996-7, Eff. July 1, 1997.