



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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Steven D. Capps
Director

MEMORANDUM

DATE: April 10, 2020

TO: Friends of the Court
Chief Circuit Judges
Presiding Family Division Judges

cc: Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps, Director, Friend of the Court Bureau

RE: Parenting Time and Child Support Issues under Executive Order 2020-35

Pursuant to the Friend of the Court Act, the State Court Administrative Office, the Friend of the Court Bureau, develops and recommends guidelines for conduct, operations, and procedures of the friend of the court (FOC) offices. MCL 552.503(7) states, "Each friend of the court shall take all necessary steps to adopt office procedures to implement this act, the Michigan court rules, and the recommendations of the bureau."

Governor Whitmer signed Executive Order 2020-35 (EO) to close all schools for the duration of the school year. The EO offers districts an array of methods to continue education, end the school year, and provide an alternative calendar. Because many parenting time and support orders tie provisions to the school year, FOC offices will be asked to interpret the orders under these unusual conditions.

Although the trial courts may ultimately have to determine what their orders provide if the parties disagree, this memorandum's purpose is to provide FOC offices guidance in determining whether to enforce parenting time provisions and child support provisions absent court action.

If court or FOC staff have any questions, or would like additional information or clarification regarding this memorandum, please contact Paul Gehm at Gehmp@courts.mi.gov or 517-373-5975.

A. Overview of Executive Order 2020-35 (EO)

While the EO closes school facilities for the remainder of the school year, it allows school districts to continue receiving state funding by filing a Continuity of Learning Plan tailored to each individual school district. The EO provides districts with a variety of options to continue education remotely, terminate the school year, and provide an alternative school year calendar. Those changes could affect how friend of the court (FOC) offices interpret parenting time and support order provisions tied to the school year.

The press release announcing the EO states: “District plans will need to detail how districts will provide opportunities for students to learn remotely and how schools will manage and monitor their progress. It will also provide information on how parents and guardians can learn more about the local plan. . . . Every district’s plan will be different and will reflect what’s best and feasible for their community. A plan can include learning by any number of modes of instruction delivery, including a hybrid approach. . . . If the plan relies on some online instruction, the district should ensure every student who needs it has access to an appropriate device with an ability to connect to the internet. Students and families will not be penalized if they are unable to participate in their alternate learning plan. . . . School districts will have the flexibility to adopt a balanced calendar for the 2019-2020 school year and/or to begin the 2020-2021 school year before Labor Day without having to seek additional approval.”

The EO provides that local school districts may allow high school seniors to graduate by doing things like counting all grades through March 11, testing for proficiency, or using a student profile based on the student’s overall record and resume.

The EO also has provisions that change the ways schools can count days for purposes of determining whether they qualify as in-session.

B. Parenting Time Issues

Many parenting time orders provide that parents will divide time the children are not in school. Often the order refers specifically to “Summer Vacation” or “Summer Break.” Similarly, many orders provide that parties will alternate “Spring Break.”

Parents may disagree over when vacation time starts when language in the court order references something in the school year. Parents are free to agree to alternative arrangements that are necessary or desirable due to the change in the school schedule. However, if they have a dispute over the schedule, the FOC should use the original 2019-20 school calendar in enforcing parenting time complaints, because that was the calendar the court used to decide when parenting time would occur. The FOC should only change or use another interpretation if the court orders it on its own motion or after a party files a motion to interpret or change the order.

C. Child Support Provisions

A court may order child support after the child reaches the age of 18: 1) if the child is regularly attending high school full-time; 2) if there is a reasonable expectation of completing sufficient credits to graduate from high school; 3) if the child resides full-time with the recipient of support or at an institution; 4) but in no case after the child reaches 19 years and 6 months of age. MCL 552.605b(2).

With school closures, parents may be unsure whether support for an 18 year-old continues.

Some orders have a date-certain when support will end. When the order has a date-certain, the date in the order governs notwithstanding the circumstances may have changed. Like any other support orders, they are based on information available at the time the court entered them and if that information changes, it is up to the parties to move to modify the order to reflect the changes.

Some orders contain language paraphrasing the statutory language. These types of orders require reference to factors outside the order to confirm the child's continuing eligibility to receive support. Most FOC offices currently use the last day of classes or the date of graduation in determining when support should end. A parent who disagrees with the office's decision may ask a court to make the determination.

With each school district allowed to determine how the child will fulfill graduation requirements, no one approach to determine when support ends works in all circumstances. For administrative purposes, however, a single approach provides certainty and affords the parents an opportunity to file their own motions if they believe the result is unfair. In *Rowley v Garvin*, 221 Mich App 699 (1997), the Court of Appeals held that the State School Aid Act would govern what counted as a day for purposes of full-time attendance. The EO suspends strict adherence to the hours under the Act and grants other exceptions and options to provide education to students to allow them to graduate. Although, the exact legal significance of the EO on what will count as full-time attendance is not certain at this time,¹ senior class children are attending school to the extent it is possible.² Therefore, the FOC should continue to use, according to local practice, as the date a child ceases to attend school full-time, either the scheduled last day of school in the original 2019-20 calendar or the scheduled date of graduation in the original 2019-20 calendar in the child's school district, unless otherwise directed by the trial court. If a parent disagrees with that result, the parent should file a motion to interpret the order.

¹ It is possible the missed hours of instruction will count as a day under the State School Aid Act and *Rowley* will apply.

² An analogous situation occurs, and does not interrupt support, when a child who is entering or completing senior class turns 18 before the summer break in the school year. Support continues during the break until the school resumes full-time instruction.

For more information on termination dates, see

<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/FOC/Documents/FAQs/FAQ2018-01.pdf>.

D. Judicial Relief

If subsequent changes in the school schedule make the parenting time schedule difficult or impractical, the parties may file a motion to change parenting time, the parties may stipulate to a revised schedule, the FOC may schedule a joint meeting to resolve the issue, or the FOC may use its authority under MCL 552.517d to move to modify the order. If a party does not object to the FOC's recommendation after either a joint meeting or a motion, the court may enter the revised order.

If subsequent changes in the school schedule make the end date for support inappropriate, the parties or the FOC may move to modify the order.

The chief judge of the trial court may determine that the FOC should interpret its orders differently.