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Implementing Chief Executive Officer ("CEO) Provisions of MCL §1280c by An Intermediate District Superintendent

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Contents

Purpose of Memorandum 1
Operating Assumptions 2
Brief Description of State Low Achieving Schools Policy 3
Intermediate School Districts As An Appropriate Vehicle for CEO Strategy 5
Summary of Steps in Implementing CEO Strategy 5
Incompatible Public Offices 8
A Possible Deal Breaker; Federal Funds 9
Preliminary Conclusions On Selected Issues 10
Resolving An Ambiguity: What Is the Legal Status of the CEO and the CEO Group? 12
Preliminary List of Implementation Documents Required 13
Buildings, Facilities and Equipment Issues 14
Transfer of and Apportionment of District Contracts to CEO Group 16
Selected High School Issues 17
CEO Strategy and Collective Bargaining Under MCL §1280c 17
APPENDIX A: COMMON ELEMENTS OF EDUCATIONAL PROGRAMMING UNDER CEO/ISD STRATEGY 19
APPENDIX B: OTHER FINANCIAL AND OPERATIONAL CONSIDERATIONS 20
APPENDIX C: SUMMARY OF ACTIONS FOR CEO/ISD STRATEGY 21

Purpose of Memorandum

This Memorandum is designed to outline, for the benefit of Intermediate School District ("ISD") Superintendents ("Superintendent"), the process whereby the ISD Superintendent, with the consent of the State Superintendent of Public Instruction ("State Superintendent") and the ISD Board, could be appointed to assume responsibility to achieve better educational results by taking control over multiple schools within the lowest achieving 5% of public schools in the state.

For purposes of this Memorandum, the actions outlined to achieve the stated purposes are designated the "CEO/ISD Strategy" and are intended to be implemented by the state superintendent as part of the early 2015 action implementing §1280c of the Revised School Code. According to published information, the Michigan Department of Education ("MDE") will announce schools that may be placed in the reform/redesign district or under a CEO in early 2015.

Operating Assumptions

In preparing this Memorandum, the following are assumptions on which the outline is based:

1. The state superintendent of public instruction and reform district officer are prepared to implement MCL §1280c by assigning at least some of the schools in the lowest performing 5% to the reform district.

2. One or more ISD boards are prepared to assist the reform district by allowing their superintendent to act as CEO and take control of district schools and charter schools assigned to the reform district.

3. ISDs are well positioned to build the capacity to significantly improve student achievement, but will need to demonstrate a strategy to address the low performing schools issue.

4. An ISD superintendent is willing and prepared to undertake the responsibilities set forth under §1280c(7) and act as a CEO for a group of schools.

5. The state superintendent and the state school reform/redesign officer determine that better educational results are likely to be achieved by appointing a CEO to take control of multiple public schools, and identify a cluster of schools to come under temporary CEO/ISD control.

6. The Boards governing schools in that cluster have the option of choosing the CEO/ISD Strategy over other options the State Reform Officer could place them into.

7. The duration of the CEO/ISD control is two full school years after student achievement gains have removed and kept the school off of the bottom 5% list. If, in the opinion of the State Reform Officer, no improvements are being made the school will be removed from CEO/ISD control after 4 years.

8. If the school is a district based school, it will be returned to its home district once it has made academic gains and maintained those gains for two years. If the school is a charter school, it may be returned to its charter board if such still exists, and if not, will be returned to the school district in which the school building is housed.

9. During the temporary CEO/ISD control of the school, the school will be operated on a cost recovery basis, capped at what the local district receives in per-pupil State and local revenue as well as an appropriate pro-rata share of federal and other revenue. All accounts for revenue and expenditures will be kept as separate accounts. Once temporary control ends, any fund balance in the school's account will be returned to the home district or charter board if such still exists.

10. During temporary CEO/ISD control of the school, capital assets of the district including the building, grounds, and equipment will remain property of the local district or charter board if such still exists.

11. During temporary CEO/ISD control a cooperative agreement between the CEO and the home district will be implemented around the use of district/charter board owned capital assets. In addition, a cooperative agreement may be developed to cover services such as business, personnel, maintenance/custodial services, foods and/or transportation for which the CEO controlled school would pay a prorated amount.

12. As the CEO Group of schools may have little or no or cash which to start their first year, the State Superintendent and Department of Treasury, on July 1 of that year, will need to provide start-up funds for cash flow purposes through advanced state aid payments, or possibly through the issuance of a TAN or a SAN to the sending district. The CEO Group shall pay a pro-rata share of the issuance cost for any cash flow financings undertaken by the sending District. The availability of cash needs to be at a level sufficient to support all operational needs including the spending of Grant funds allocated to the school for the entire school year. The sending District is required to provide and maintain an 18 month cash flow forecast to the CEO Group by no later than April 15 and the sending District shall be required to update the cash flow forecast each month. On July 1, the sending District shall be required to provide the CEO Group a portion of the sending districts cash on hand as directed by the Department of the Treasury.

13. Should the school coming under CEO/ISD control have serious facility problems that cannot be addressed by operational funds, a sinking fund, bond, or a long-term, low interest loan from the State will need to be made available to repair those issues. The loan would be paid back by both the CEO school during CEO use of the building and then the home district or charter board when the school is returned.

14. For purposes of student enrollment, the students will be enrolled in the original home district if a district operated school, but will automatically be assigned to the CEO school. All local, state and federal funds will continue to flow to the home district and then be reallocated to the CEO school on a pro-rata basis. If the school is a charter school it will enroll its own students and operate under the restart model.

15. Schools contained in school districts under an Emergency Manager or under a Consent Agreement are not eligible and will not be considered for CEO/ISD reform option.

16. If the Restart model of reform is applied to a school assigned to the CEO/ISD Strategy, the ISD of the CEO or any other ISD may act as the educational management organization ("EMO") for that school and staff will remain public school employees.

Brief Description of State Low Achieving Schools Policy

In 2009, the Michigan Legislature responded to efforts by the federal government to encourage structural changes in the state's public education system in order to access significant federal funds being made available to states under the Race to the Top ("RTT") legislation of the Obama Administration.

Michigan's response to the RTT funding opportunity included enactment of Section 1280c of the Revised School Code, MCL §380.1280c, whereby the state education authorities would annually generate a list of the lowest performing 5% of public schools in the state, including both district schools and charter schools[i]. For each of these lowest performing schools, the Legislature directed the state superintendent and other education officials to work with existing school authorities to implement reform strategies set forth in the RTT and incorporated in the Michigan Revised School Code. (Unfortunately the funding was not approved, but the structural changes remain in place.)

The intent of the law was to remove specific failing school buildings from their school districts and assign them to the state school reform/redesign school district in order to apply federally mandated remedial strategies to improve school performance.

For a number of reasons, the state superintendent of public education has been unable to fully implement the section. The state superintendent has indicated he would begin to name schools in 2015.

The latest iteration of top to bottom ranking is explained in the following excerpt[ii] from the MDE website:

> Priority Schools are the bottom five percent of schools on the 2014 Top-to-Bottom (TTB) List, or those ranked in the 0-4 percentiles. The Top-to-Bottom List is a performance ranking of schools based on achievement, improvement, and within-school achievement gaps. In 2012, the Priority School designation replaced the Persistently Low Achieving (PLA) designation, used in 2010 and 2011 to identify low-performing schools. This brief discusses characteristics of the 2014 Priority School List, and also highlights some changes in the composition of Priority/PLA schools over time.
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> Most Priority Schools are located in urban areas. 69% of Priority Schools are found in urban areas, 26% are in suburban locations, and 5% are in rural areas. However, only 21% of schools statewide are found in urban areas, whereas 48% are in suburban areas and 31% are in rural locations.

The implementing strategy of the state included the creation of a new position -- the "state school reform/redesign officer" -- and a new state agency -- the "state school reform/redesign school district."

In addition, the Legislature created a second strategy; it authorized the state superintendent to identify a subset of low performing schools and assign those schools to a new "chief executive officer" with powers and duties parallel to the state school reform/redesign officer. The law provides that such a step can only be taken if the state school reform/redesign officer determines that "better educational results are likely to be achieved by appointing a chief

executive officer." The CEO provision allows clustering or regionalization of the administration of schools that would otherwise be in a single statewide reform district.

For ease of understanding, the following terms will be used:

> **"Reform officer" or "SRO"** means the state school reform/redesign officer.
>
> **"Reform superintendent"** means the reform officer acting in the capacity of superintendent of the state school reform/redesign school district.
>
> **"Reform district"** means the state school reform/redesign school district.
>
> **"CEO"** means a chief executive officer appointed by the state superintendent.
>
> **"CEO Group"** means, collectively, a group of schools assigned to a CEO.
>
> **"Sending district**" **and "home district"** means the district (or charter school corporation) whose school is assigned to the reform district or CEO Group.

Intermediate School Districts As An Appropriate Vehicle for CEO Strategy

The Michigan Revised School Code authorizes intermediate school districts ("ISDs") as a part of Michigan's system of free public elementary and secondary schools. An essential part of an ISD is to assist both district and charter schools within the ISD to improve performance.

This Memorandum proposes that an ISD Superintendent and a cooperating intermediate district may be an appropriate vehicle whereby the state policy of focusing on improving educational outcomes of low performing schools can be accomplished, in part, by designating an ISD superintendent as the chief executive officer "to take control of multiple public schools."

Summary of Steps in Implementing CEO/ISD Strategy

The process whereby a group of low performing schools is assigned to a chief executive officer with the statutory powers of a general powers school district and the powers of the reform officer is untested. Accordingly, implementing the CEO/ISD Strategy will require close cooperation and creativity among state education officials, participating ISDs, and local districts and charter schools with schools on the lowest performing 5% list.

In order to develop a workable strategy that leads to a successful turnaround for students and schools involved, the following steps are proposed:

> Step 1: One or more cooperating ISDs agree to participate in implementing the CEO/ISD Strategy. As contemplated, the CEO position involves the appointment of a single individual as CEO, but the cluster of schools assigned to the CEO could involve low performing schools in more than one ISD.

Step 2: An ISD Superintendent agrees to assume the role of CEO in addition to his or her duties as ISD Superintendent and receives the consent of the Superintendent's ISD Board.

Step 3: The participating ISD officials engage in communications with the State Superintendent to propose the CEO/ISD Strategy as part of the State Superintendent's implementation of the §1280c policy in 2015.

Step 4: The State Superintendent develops protocols for undertaking the assumption of responsibility for a school from the existing district or charter board to the CEO and establishes funding sources for the CEO Group school as described in this document.

Step 5: The participants work with the state superintendent and the Michigan Department of Education ("MDE") staff regarding announcement and implementation steps by the state superintendent and reform/redesign district superintendent. In addition, the state superintendent will request a sign off from the assistant attorney general assigned to the MDE in order to assure that the CEO/ISD Strategy is consistent with state law.

Step 6: While the ISDs complete the plans for implementation, the State Superintendent, reform district officer and ISD officials negotiate the optimal number and location of low performing schools to be assigned to the CEO.

Step 7: The Boards of Low Performing Schools selected for the CEO/ISD Strategy are given a choice to accept that option or be assigned to another option chosen by the SRO.

Step 8: An Implementation Plan is developed for the CEO to assume all "powers, rights, duties, and obligations" related to assigned schools, including required addenda to collective bargaining agreements, cooperative agreements between the CEO and home district or charter boards, financing issues, and state aid requirements. Student enrollment and student records will continue to be the responsibility of the home district unless a restart model is chosen by the CEO, but students enrolled within the boundaries of the CEO school shall be assigned to the CEO school.

Step 9: The CEO selects a professional team to work with him/her on implementation of CEO control and the selection of a reform option for each CEO controlled school.

Step 10: Shortly after the CEO School Group has been finalized, the home districts of the schools will make relevant data available to the CEO - including costs trends, staffing reports, student achievement data, collective bargaining agreements, an asset inventory, and a third party independent facility conditions reports.

Step 11: Shortly after the CEO School Group has been finalized, the CEO and home district or charter board will have entered into cooperative agreements defining the arrangement for capital assets, arrangements for enrolling and assigning students, possible pro-rata arrangements for business and operational services, pro-rata arrangements for debt and revenue issues, etc.

Step 12: After necessary cooperative agreements are in place and relevant data has been reviewed, the CEO will determine which reform plan will be used for each CEO Group school. Whether transformation, turn-around, or restart each school reform plan will have some common elements that are research based and shown to improve student learning. These can be found in Appendix A.

Alternative Strategies Based on Model Adopted:

- If the plan is **Transformation**, the CEO will work with school staff to develop a new transformation plan for the coming school year. Plans will include federal and state requirements. Staff will remain employees of the home district of the school, but will be under the supervision of the CEO. Master contracts will be reviewed for changes that might be required to implement the plan and prepare addenda for such.

- If the plan is **Turnaround**, the CEO will create the criteria to remove 50% of the staff of the turnaround school and then work with the remaining staff to develop the turnaround plan. The staff will remain employees of the home district, the CEO will hire staff to replace the 50% who left, and staff will be under the supervision of the CEO. The master contract will be reviewed for changes that might be required to implement the plan and prepare addenda for such.

- If the plan is **Restart**, the CEO will post all jobs for the CEO school by the end of the preceding year. All staff not covered by cooperative agreements with the district will be employees of the CEO group and the agency serving as the EMO.

- If the plan is **closure** of the building with reassignment of students to other buildings in the district, the CEO will work with the home district or charter board to effectuate such closing and reassignment.

Step 13: The CEO will work with State to secure necessary funds for start-up and cash flow, which might be in the form of a TAN, a SAN, or advance of State Aid.

Step 14: The CEO team will develop a Communications Plan to inform and educate students, parents, teachers, community leaders, school boards, etc. regarding the development of the CEO Strategy and its implementation. The plan will include a parent/citizen advisory council to be established for each CEO Group school.

Step 15: The CEO will assume responsibility for a group of low performing schools at the start of the 2015 school year. Teacher orientation, building access and student recruitment will need to be initiated well before the actual start of school.

Incompatible Public Offices

In preparing the CEO/ISD Strategy, the issue of "incompatible offices" was addressed. The following is an outline of the conclusions:

An intermediate school district ("ISD") superintendent may also serve simultaneously as CEO for a cluster of schools under MCL §1280c without violating the Incompatible Public Offices Act, MCL §15.181 *et seq*. ("IPOA").

- An ISD superintendent is a "public employee" under the IPOA.
- An ISD superintendent is also a "public officer" under the IPOA.
- A CEO under §1280c is a "public employee."
- An ISD superintendent who is also a CEO is holding two public positions simultaneously.
- The IPOA does not prohibit a person from holding two public positions simultaneously.
- Section 2 of the IPOA provides that "a public officer or public employee shall not hold 2 or more incompatible offices at the same time."
- Servings as both an ISD superintendent and CEO would be "incompatible offices" only if:
    - There is a "subordination of 1 public office to another."
    - There is "supervision of 1 public office by another."
- Under the Revised School Code, the positions of ISD superintendent and CEO are under separate supervision:
    - The ISD superintendent is under the supervision of the ISD board and the state superintendent.
    - The CEO is under the supervision of the Reform Officer and the state superintendent.
    - The CEO is not "subordinate" to the ISD superintendent.
    - The ISD superintendent is not "subordinate" to the CEO.
- When a CEO operates a cluster of schools within an ISD, there is an overlap of responsibilities for those CEO-controlled schools.
    - MCL §380.623:

      (1) The intermediate school board shall do all of the following:

      > (a) Perform duties required by law and by the state board, but shall not supersede or replace the board of a constituent district, **nor shall the intermediate school**

> **board control or otherwise interfere with the rights of constituent districts** or public school academies except as provided in this part.

Most of the services provided by an ISD for a district must be "upon request of the board of a constituent district."

A Possible Deal Breaker; Federal Funds

This CEO/ISD Strategy is based on the ability of a CEO to take full responsibility for a cluster of schools and have the same resources as the home district had for the school and its students. §1280c clearly intends that with the following language:

> §1280c(6) These powers, rights, duties, and obligations [of the reform district] include, but are not limited to, all of the following:
>
> (i) Authority over the expenditure of all funds attributable to pupils at that school….
>
> (7) If the superintendent of public instruction appoints a chief executive officer to take control of multiple public schools under this subsection…the chief executive officer has all of the same powers and duties that the state school reform/redesign officer has for public schools placed in the state school reform/redesign school district.

Federal funds regulations are complex and uncertain. In addition, some school districts benefit substantially from additional federal funds made available to districts with falling enrollment. If the reform district or CEO school students are not eligible for the same level of federal funding, the intent of the legislature in enacting §1280c may be thwarted.

The state superintendent has not yet indicated whether federal funds that would otherwise be available to the home district will follow the school and its students when the school is assigned to the reform district.

One potential approach would be to continue to treat students as enrollees of the assigning district in order to access maximum federal funds. This approach would be consistent with the CEO/ISD Strategy, which assumes schools will only be temporarily assigned to the CEO Group and will be returned to the home district. But the approach creates a number of other conceptual and management issues that would need to be resolved among the CEO, the assigning district and MDE staff.

Preliminary Conclusions On Selected Issues

1. Under §1280c, an ISD may act as an EMO and assume management of a CEO Group school that is subject to the restart model. This is based on the understanding that the CEO Group is a separate legal entity from the ISD.

2. The state superintendent's authority to make the decision that "better educational results are likely to be achieved" under the direction of a CEO comes directly from the statute and the underlying policy established by the legislature. This is a matter within the superintendent's discretion and does not require any particular procedural process. The state superintendent should, of course, have a valid and well-articulated basis for the decision.

3. The state superintendent and MDE staff will need to assist the CEO in accessing all Title and Special Education funding attributable to the students in the school assigned to the CEO Group. The federal regulations and state procedures may create impediments that require negotiations and cooperation to work through the issues. The CEO Strategy is based on the assumption that federal money presently coming to the home district will flow through to CEO school. Nevertheless, for cash flow purposes, an advance based on expected grant revenues may be necessary.

4. The CEO Strategy will apply to a low performing charter schools authorized by a state public university or other authorizer. Every charter school is already subject to contract termination procedures by the authorizing body, but §1280c contemplates a continuation of the charter school's existence under the control of the CEO, not the charter school. The CEO will interface with the charter school board, not the authorizing body. The interplay of the two separate governance structures in the School Code needs to be determined.

5. The CEO will have "authority over the expenditure of all funds attributable to…that portion of proceeds from bonded indebtedness and other funds dedicated to capital projects." However, since most district-bonded indebtedness is repaid from property tax proceeds, neither the CEO nor the CEO Group have any additional responsibility for bonded debt incurred for capital projects related to the school. The CEO does have access to and control over bond proceeds attributable to the school. Appendix B identifies and discusses a number of related issues

6. On the issue of Credentials/Diplomas, where the reform/redesign district or a CEO Group includes a high school, the awarding of diplomas should remain with the home district as long as the CEO controlled school meets the MME graduation requirements of the State of Michigan. But for a charter, whose board may no longer exist, the CEO controlled school will have to grant its own diplomas. The School Code provides diploma-granting power to the CEO because they are within the powers of a general powers school district.

7. The law requires that the CEO assigned schools from multiple districts may not unilaterally adjust or harmonize pay scales or benefits. The CEO will be required to deal with each separate school as different bargaining unit.

8. School building and equipment issues including treatment and access to property during period after announcement but before CEO assumes control at the start of the school year need to be addressed. The CEO/ISD Strategy assumes an agreement will establish terms by which property, buildings and capital assets will be returned to the home district when the state superintendent releases the school from CEO supervision. The agreement may also address special issues related to charter schools that are also under oversight by an authorizing body.

9. While the CEO has extensive rights and powers, the CEO must also accept any "duties" or "obligations" of the previous school boards of the assigned schools. The CEO will need to determine if there is a significant risk, e.g., unsettled uninsured litigation relating to the school. In particular, the CEO/ISD Strategy anticipates that many low performing schools will have serious deferred maintenance issues in addition to the low educational performance. While the assigned school assets will remain the property of the home district, there will probably be a need for a long-term state loan for facilities that would be paid back by CEO Group while operating the school and the home district after the CEO Group returns the school. The state was required to use this approach for EAA schools.

10. The CEO/ISD Strategy is based on having finance issues, including implementation of statutory direction for the CEO to assume authority over the expenditure of all funds attributable to pupils at the school, to be handled pro-rata. This includes that portion of proceeds from bonded indebtedness and other funds dedicated to capital projects that would otherwise be apportioned to the school by the school board that previously operated the school.

11. The CEO will need to work with MDE and Treasury officials and involved district officials regarding timing of state school aid payments and access to federal funds attributable to the students in each of the schools. While separate books will be established for each school, the CEO Group will act as a school district with appropriate management, including cross subsidies. The statutory language giving the CEO the powers of both a district superintendent and a district school board give the CEO wide latitude in managing and expending funds.

12. School enrollment issues with the school districts and charter board will need to be addressed. The home district may encourage students to transfer to other schools in the district rather than have the students remain in a school assigned to the CEO Group - which is why it is extremely important for the home district of the low performing school to have the option to choose the CEO/ISD Strategy before it moves forward. This will hopefully establish a cooperative culture. In this culture of choice, it will be the challenge of the CEO school to be good enough to keep and draw folks. It may be advisable to restrict the enrollment of the CEO school to the same radius that is being used for EAA schools.

13. If necessary, the CEO will have authority to terminate any contract or portion of a contract entered into by the school board that applies to a school except contracts with bargaining groups.

14. Student records are an essential part of the public education system. As CEO control of CEO Group schools is temporary, we propose that the home district or charter board retain the responsibility for maintaining school records for those students assigned to the CEO Group schools.

15. The CEO/ISD Strategy is based on a model where the capital asset (and the attendant insurance obligation) remains with the home district. Should a facility title transfer to the CEO Group, however, there will need to be an insurance professional examine the insurance coverage of the assigned school and develop an insurance plan for the new school.

Resolving An Ambiguity: What Is the Legal Status of the CEO and the CEO Group?

The state law creating the reform/redesign district is not a model of legislative drafting or clarity. What became §1280c was developed late at night where the focus was primarily on securing RTT funds.

For the purposes of this proposal, the CEO Group is considered a separate legal entity from the reform district, which is an agency of state government. As a separate legal entity, the CEO Group is an LEA and exercises independently all the powers provides in §1280c(7) and other applicable provisions of the Revised School Code.

CEO Status

The CEO provisions in subsection (7) are particularly vague. Nevertheless, the Legislature clearly intended the CEO approach be an approved method of addressing a cluster of low performing schools.

Under §1280c, the reform officer is an unclassified (i.e., non-civil service) state employee.[iii]

The CEO status is less clear. The CEO is a public officer and has extensive statutory powers, exceeding any school district superintendent or general powers school board, to control the cluster of assigned schools. Subsection (7) does provide, in part, that the "chief executive officer shall exercise any other powers or duties over the public schools as may be directed by the superintendent of public instruction." This would allow the dual appointment of an ISD superintendent as a CEO.

As the CEO Group would be its own legal entity, the CEO is a public employee of the CEO Group but is not a state employee assigned to serve as CEO. He or she is a local education official and may also be an ISD superintendent who is given additional duties and powers to serve as a CEO of the CEO Group.

CEO Group Status

The legal status of the CEO Group is also uncertain. The CEO Group is a subset of individual schools assigned to the reform district from multiple school districts. (None of these schools may be in Detroit or any school district with an emergency manager, and we recommend they not be schools in a consent agreement either.)

In one sense the CEO Group is just a list of entities in the reform district. But the law gives the CEO power of both a school board and a district superintendent, suggesting that the CEO Group has some independent status from the reform district.

The following may help clarify the issue:

The reform/redesign district is clearly a separate legal entity and "public body corporate." The district has extensive legal powers that are implemented by the reform/redesign superintendent. The district itself can sue and be sued as a legal entity.

Subsection (7) includes no such language for a CEO Group. The powers of the CEO are clear and extensive with respect to each assigned school. But the law does not make it clear that the cluster of schools itself has legal status as a governmental entity. This ambiguity may create significant issues with respect to employment, finances, contracts and litigation.

Treating the CEO Group as a separate legal entity from the reform district, it would be its own LEA, but home districts and charter boards would continue to enroll students and have funds (local, state and federal) for those students flow through them to the CEO Group with state aid and federal funding staying at the level of those home districts/charters, making it seamless when the CEO school returns to the home district/charter board. As its own LEA, however, CEO school would handle its own employment, finances, contracts and litigation. It would enter into its own agreements with home districts.

Preliminary List of Implementation Documents Required

Implementing the CEO/ISD Strategy will be a document intensive exercise. The following is a preliminary list of some of the documents that will need to be prepared:

1. Request or Petition to the state superintendent to appoint a CEO for a defined cluster of schools on the low performing list. The list will likely be negotiated among state education officials and the participating ISDs in order to assure they meet the statutory requirements.
2. Memorandum of Understanding or similar agreement among multiple ISDs agreeing to cooperate with a CEO Group.
3. Resolution of the employing ISD approving the appointment its Superintendent as CEO including any commitments or agreements from the ISD to assist or provide services as an EMO. Follow up with any required written agreements after CEO is appointed. (Conflict of interest and incompatible office laws may apply.)
4. Order from the state superintendent, doing the following:
    a. Appointing the ISD Superintendent as CEO.
    b. Identifying the cluster of schools that will be assigned to the CEO Group.
    c. Include directions from the state superintendent to the CEO to take agreed actions to create appropriate legal structure for the CEO Group.
    d. Other matters as agreed to implement the CEO Strategy.
5. Draft Orders and Protocols from the State Superintendent to the CEO and to school district boards and superintendents of school being transferred to the CEO Group. And Cooperative agreements between the CEO and districts or charter boards of the schools assigned to the CEO group outlining the scope of what might be shared services and requirements for capital assets and student enrollment issues.

6. Create a FAQ to be updated and posted on a website publicly detailing the implementation plans and activities.
7. Requests to secure copies of existing collective bargaining agreements ("CBAs") and draft addenda to CBAs.
8. If a restart model is applied to any school, interview and draft an agreement with ISDs willing to serve as an educational management organization ("EMO") to manage and operate the public school or schools.

Buildings, Facilities and Equipment Issues

The CEO/ISD Strategy is built on the assumption that buildings, facilities and most equipment would remain the property of the assigning district during the temporary period the CEO operates the school. A chart in Appendix C summarizes this and other operational issues noted herein for the CEO/ISD Strategy.

Section 1280c, however, is vague as to what actually happens to a school that is assigned to the reform/redesign district or the CEO Group. The following is the only language that indirectly refers to the school building:

> MCL §1280c…
>
> (6) The state school reform/redesign school district is created. … All of the following apply to the state school reform/redesign school district:
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> ***
>
> The state school reform/redesign officer shall act as the superintendent of the state school reform/redesign school district. **With respect to schools placed in the state school reform/redesign school district**, the state school reform/redesign **officer has all of the powers and duties** described in this section; **all of the provisions of this act [School Code] that would otherwise apply to the school board that previously operated a school placed in the state school reform/redesign school district apply to the state school reform/redesign officer with respect to that school**, except those relating to taxation or borrowing; except as otherwise provided in this section, the state school reform/redesign **officer may exercise all the powers and duties otherwise vested by law in the school board that previously operated a school placed in the state school reform/redesign school district and in its officers**, except those relating to taxation or borrowing, and may exercise all additional powers and duties provided under this section; and, except as otherwise provided in this section, the state school reform/redesign officer accedes to all the rights, duties, and

> obligations of the school board with respect to that school. **These powers, rights, duties, and obligations include,** but are not limited to, all of the following:
>
> **(i)** Authority over the expenditure of all funds attributable to pupils at that school, including that portion of proceeds from bonded indebtedness and other funds dedicated to capital projects **that would otherwise be apportioned to that school by the school board that previously operated the school according to the terms of the bond issue or financing documents.**

To determine the specific powers of the CEO with respect to the school building, it is necessary to refer to the other sections of the School Code that "that would otherwise apply to the school board that previously operated a school." For example:

> MCL §380.11a. General powers school district.
>
> ***
>
> (3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:
>
> Acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

Accordingly, under the present law and structure, the CEO would have full authority and responsibility for the acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings for any school building assigned to the CEO Group under §1280c.

In addition §1260 provides:

> Unless approved by the state board, a school board or intermediate school board shall not impose any deed restriction prohibiting, or otherwise prohibit, property sold or transferred by the school board or intermediate school board from being used for any lawful public education purpose. Any deed restriction or other prohibition in effect as of the effective date of this subsection is void.

> If a school board or intermediate school board offers property of the school board or intermediate school board for lease or rent, the school board or intermediate school board shall not refuse to lease or rent the property to a person solely because the person intends to use the property for an educational purpose, if the intent of the person is to use the property for a lawful educational purpose.

Although the CEO may have "full authority," the language does not require the CEO to assume full control of buildings and facilities. The CEO Strategy is based on the following:

- The title of property stays with the Sending District or charter board.
- The CEO operated school cannot be closed except with CEO approval.
- The "portion of proceeds from bonded indebtedness and other funds dedicated to capital projects that would otherwise be apportioned to that school," will be apportioned during the period the school is operated by the CEO.
- If the building has significant deferred maintenance and requires substantial capital improvements before opening as a CEO Group school, the state will need to approve a long term loan to be absorbed by the CEO Group while in control and then by the district or charter board when returned. The state provided similar assistance to the EAA when it took over DPS schools.
- The state superintendent should restrict equipment in the school from being transferred to another school in the Sending District before the CEO takes charge.
- A mechanism needs to be in place for how the statutory language will apply to a charter school where the charter school building is leased from the EMO operating the school.

Transfer of and Apportionment of District Contracts to CEO Group

Under §1280c, the CEO "accedes to all the rights, duties, and obligations of the [Sending District] school board with respect to that school." This language will cover a wide range of contracts, service agreements, licenses, leases, etc. entered into by the Sending District that relate, in part, to the school assigned to the CEO Group.

In addition, the CEO has "power to terminate any contract or portion of a contract entered into by the [Sending District] school board that applies to that school."

The bigger challenge may be, not in terminating a contract, but working with the Sending District and vendors to apportion the contract between the remaining Sending District schools and the school assigned to the CEO Group.

As soon as a school is identified, the CEO should initiate a process with the Sending district to inventory all contracts that relate to the school transferred to the CEO Group. It is likely that legal counsel will need to prepare some sort of notice and explanation to send (perhaps jointly by the Sending District superintendent and the CEO) to vendors and entities with contracts affected by this provision.

Selected High School Issues

If a high school is among the schools assigned to a CEO Group, there are a number of issues that will need to be resolved on an individual school basis, including:

- High school sports. The CEO Group has authority to continue to use the name and mascot of the Sending District for interscholastic sports.

- There may be implications for leagues or organizations where the Sending District is the member and the CEO Group school wants to participate in the league or organization? This may be covered under the contract transfer and apportionment language, but requires individual attention.

- Credentials and diplomas. The CEO/ISD Strategy is based on the view that if a student graduates from a CEO Group school and meets requirements established by the State of Michigan and its MME program, the graduate's diploma comes from the Sending district. But this assumes the Sending District Board consents to the process. In the case of a charter that no longer exists, then the CEO school will need to issue diplomas.

CEO Strategy and Collective Bargaining Under MCL §1280c

Under the CEO/ISD Strategy, the responsibility for operating the CEO Group of schools is to be the responsibility of the CEO. This occurs when the reform officer transfer the schools. The following reflects the approach required by §1280c with respect to collective bargaining:

1. The CEO will run schools that follow the standard model - teachers are public school employees and are entitled to form or not form a collective bargain agreement under the state's public employment relations act ("PERA").

2. The CEO, when using the Restart reform model, is empowered to act as an authorizing body for public school academies ("charter schools") that, under Michigan practice, employ teachers through an education management organization ("EMO"). Under the CEO/ISD Strategy the EMO would be an ISD and the teachers will remain public school employees. They will have the right to form their own union (under PERA) if so desired.

3. The CEO Group may receive schools and teachers from multiple districts, each with their own contracts, rules, pay scales and benefits.

4. Section 1280c(8) provides that where a school is placed under the control of the CEO, the CEO must:

> Issue an order…imposing an addendum to each applicable collective bargaining agreement in effect for the public school as necessary to implement the school intervention model and that meets the requirements of subsection (11).

Implicit in this language is that for each separate school transferred and as to each separate collective bargaining agreement for that school, there must be an "addendum." Accordingly, the CEO will be responsible for managing many individual schools with multiple collective bargaining agreements, pay and benefits packages.

5. Section 1280c(9) indicates that the powers of the CEO with respect to transferred schools includes "all the rights, obligations, functions, and responsibilities" that would otherwise apply to the school board or other school officers that previously operated the public school. These include functions related to collective bargaining agreements:

   a. Under §1280c(9)(b)(ii):

   > Subject to subsection (11), rights and obligations under collective bargaining agreements and employment contracts entered into by the school board or other school officers for employees at the school.

   b. Under §1280c(9)(vi): power to terminate any contract or portion of a contract entered into by a school board or other school officer that previously operated the school.

   c. The addendum to collective bargaining agreements called for in §1280c(8) is limited by subsection (11) by providing that any contractual or other seniority system that would otherwise be applicable shall not apply at the public school. But, "this subdivision does not allow unilateral changes in pay scales or benefits." Under this structure, the CEO may have a multiplicity of schools each with its own pay scale and benefits package.

APPENDIX A: ELEMENTS OF EDUCATIONAL PROGRAMMING UNDER CEO/ISD STRATEGY

Whether transformation, turn-around or restart each school reform plan will have some common elements that are research based and shown to improve student achievement.

- Each school will have a school improvement team led by the building principal with a teacher from each grade level, one from special education and ELL, and the instructional coach assigned to the building; the team will meet bi-weekly.
- Common grade level or course specific assessments will be used to measure, no less than 3 times per year, student attainment of critical learning objectives including a fall and spring academic writing assessment for grades 3-10.
- Curriculum used at grade levels for core courses will align with state standards. Critical learning objectives at each grade level for each core content area/course will be identified and calendared for teaching, assessment and re-teaching.
- Programs and instructional materials selected for use will be vetted in terms of their research base and record of success with like populations of students.
- A dashboard of data points will be developed, published and updated showing parents, students and the public the % of students proficient in reading, math and writing at each grade level as measured by the common grade level/course assessments as well as state tests, % of teachers who are highly qualified, class sizes, $'s spent on administration costs, and other pertinent information.
- The student calendar will be no less than 180 days with a summer component of an additional 18 days. The teacher calendar will be 188 days during the regular year. Of the eight additional days beyond the student calendar 2 days will be spent at the end of the year finalizing student records, preparing skill reports for the summer term for each student, and establishing class groups for the next grade; 2 days will be spent at the beginning of the year preparing classrooms and materials, studying the student class list, and meeting with grade level teams to set goals and benchmarks for the year; and 4 days will be incorporated into the school calendar for professional development required by the school improvement plan.
- Summer term will be scheduled so that the summer break for students is no longer than six consecutive weeks. Teachers will have the option of teaching the summer term. Students not meeting grade level/course benchmarks will be required to attend the summer session; other students may attend. Entering kindergarten students will be screened at time of registration and if developmental lags are found, will attend the summer session prior to their start.
- The student school day will be no less than 6.5 hours long. Within the school day time will be set aside for tutorial intervention around the critical learning objectives for students who need extra help, or to extend learning activities for students who have mastered the objectives. All teachers will be involved in this intervention period and students will be regrouped as necessary, as per the instructional calendar of critical learning objectives.
- Each student will maintain their own performance appraisal notebook showing their progress in mastering the critical learning objectives via classroom assessments, projects, writing assessments, district measures and state tests.
- Each grade/course will post a data wall showing the % of students mastering the critical learning objectives; and the school will post data showing student proficiency at the building level.
- Standards based report cards will be used so that parents and students have periodic reports showing the student's progress on critical learning objectives for the grade/course.

APPENDIX B: OTHER FINANCIAL AND OPERATIONAL CONSIDERATIONS UNDER CEO/ISD STRATEGY

1. If a Sending District has an unexpended grant carryover award, the CEO school should receive its pro-rata share.
2. If the Sending District has or passes a sinking fund, the CEO school should receive its pro-rata share or explicit project funds.
3. Any student activity funds belonging to the CEO school should be transferred to the school.
4. If a Sending District is in deficit, the CEO school should pay its pro-rata share of the amount of deficit reduction each year as specified in the state approved deficit elimination plan, and conversely, if the district has positive fund equity, the CEO school should receive its pro-rata share of the Fund equity on July 1. As the fund equity will not be established until the financial statements are completed the amount provided on July 1 to the CEO School shall be based on the School District budget as amended and an adjustment will be made , up or down on December 1 to coincide with the audited financial statements.
5. If a Sending District has operating long term debt, not supported by a millage, the CEO school will pay its pro-rata share of the applicable debt.
6. If a Sending District receives a prior year adjustment of state aide, the CEO school will receive its pro-rata applicable share.
7. If there is a property insurance claim received by the Sending District on behalf of the school assigned to the CEO, the funds will be transferred to the CEO school.
8. Worker Comp claims on employees assigned to the CEO school will be the responsibility of the CEO school going forward, not for claims occurring before the school was transferred to the CEO group.
9. Employees assigned to the CEO school who have compensated leave accruals will have those accruals assigned to the CEO school prorated to the time they have spent in the CEO school after it was transferred.
10. For a charter school, the CEO Group must take title to a building because of charter board not existing, then it will need to insure the building and plan for its transmittal to the home district of the CEO school at the conclusion of the temporary CEO Group management. To insure such building, a 10-year loss history will be helpful.

APPENDIX C: SUMMARY OF ACTIONS FOR CEO/ISD STRATEGY

Category	Action	
Assignment and Selection to CEO Group	State Reform Officer selects CEO option for a group of schools. State Superintendent assigns those schools to CEO/ISD group. CEO reviews and accepts those schools. The home district or charter board for those schools accepts the assignment or refuses and is placed by SRO to another option.	
CEO School Building and Capital Assets	All capital assets (equipment, building, land and fixtures) stay with the home district in which the school resides or with the charter board if owned by them. The CEO group will reimburse the home district or charter board for costs related to operations, maintenance, grounds, insurance, and security in an amount not to exceed actual cost per pupil for these activities as reported in the most recent audit adjusted annually. There will be a contract between the home district/charter board and CEO to cover these things. The home district or charter board owning the building is responsible for capital repairs. Except for those things covered by a bond or sinking fund, the CEO group will pay an annual amount based on useful life of the asset to the home district or charter board. Actual costs for utilities for the CEO school building will be paid by the CEO group. The home district or charter board may not close a building assigned to the CEO group without the written prior approval of the CEO.	
Funding (any model)	State Per Pupil	CEO school will receive its pro-rata share of state aid directly from the home district or charter board and will account for such school by school.
	Federal Funds/Grants	Federal funds and grant dollars for the CEO school will continue to go to the home district or charter board. The home district or charter board will transfer the per pupil share of these dollars, including carry over and proportionate share of administrative costs, to the CEO school through the draw down process within 30 days of draw downs submitted. The CEO school will fulfill requirements of grant application, grant management and draw down processes as applicable to its building's plan included in the grant for the home district or charter board.
	Property Tax	The CEO school will receive its per pupil share of property tax revenue, including PA18 funds for Special Education numbers.
	Other Local Revenue	Bond Issues and Sinking Funds will be assigned to the CEO school for items related to the building housing the CEO school. In addition, the home district or charter board will keep net proceeds from other local revenue, such as rental, if they have generated such as long as the activities taking place in the CEO school building has received prior approval from the CEO. The CEO school keeps what it generates. This will be covered in the cooperative agreement between the home district and the CEO Group.

APPENDIX C: SUMMARY OF ACTIONS FOR CEO/ISD STRATEGY

Funding (any model) cont'd	Fund Equity and Unexpected Revenue Gains	The CEO schools pro-rata, per pupil share of fund equity or other revenue increases (such as MTT refunds, out-of-formula windfalls, and prior year adjustments) will be transferred to the CEO school from the home district or charter board.		
	Deficits, Bonds and Other Long Term Debt	The CEO schools will pay its pro-rata share of the home district's deficit, long term debt, appropriate bond repayments to the home district from its per pupil state funds.		
	School by School Return of Fund Balances	Upon return of the CEO school to the home district in which it resides, or to the charter board still owning it, the CEO will share that school's accounting records, and if funds remain in that school's fund balance, such will be returned to the home district or charter board.		
	Start-up Advances	The CEO school group will likely be starting with no fund balances. Therefore it will need advance payments, from MDE no later than July, of its pro-rata share of anticipated grant funds, state aide and property taxes. This is for cash flow purposes.		
	Other Costs and Liabilities	Accrued costs of unemployment, sick leave pay-outs, STD, LTD, or workers comp claims that were initiated while CEO school staff was working in home district schools remain with the home district. The CEO group is responsible for these costs and claims going forward and only for the time period the CEO operates the school.		
CEO	Reimbursement for CEO time spent in CEO schools will be paid to the ISD employing the CEO. Amount paid will be in proportion to the direct time and operational duties worked by the CEO.			
	Transformation	**Turn-around**	**Restart**	**Closure**
Business and Support Services (Food Service, Transportation, Technology, Security, HR, Pupil Accounting, Business Office, Payroll)	The CEO and home district will explore those business and non-instructional support services that could be performed by the home district and paid for on pro-rata cost recovery model by CEO group. A contract for those selected services will outline costs, performance expectations, and products. If an agreement acceptable to the CEO cannot be worked out, the CEO will seek these services elsewhere with an EMO entity like an ISD.		The CEO may choose to work with the home district housing the CEO school as for the other models; but may also choose to immediately select an EMO, such as an ISD to provide them.	NA
Dispute Resolution	(A dispute resolution mechanism needs to be developed, regardless of model, if CEO cannot resolve the dispute.) The State Reform Officer will act as arbitrator with appeal to the State Superintendent whose decision shall be final.			

APPENDIX C: SUMMARY OF ACTIONS FOR CEO/ISD STRATEGY

Reform Model	Whether transformation, turn-around, or restart, each school reform plan will have some common elements that are research-based and shown to improve student achievement. These are listed in Appendix A. Once a local district has a school named by the State Superintendent to be assigned to the CEO group, staffing for that school will remain in place until the CEO selects the reform model for that school. Any staffing changes that are considered must be approved by the CEO.			
	Transformation	**Turn-Around**	**Restart**	**Closure**
Program Plan	Will follow rules for this option as defined by MDE.	Will follow rules for this option as defined by MDE.	Will follow rules for this option as defined by MDE.	CEO will assist home district / charter board if they agree to this option.
Teachers	Teaching and support staff stay as employees of the home district but are assigned to the CEO group. Charter school staff will remain employees of charter board or will become employees of CEO's chosen EMO.	50% of staff are replaced as employees of the home district with assignment to the CEO group. Charter school staff will remain employees of charter board or will become employees of CEO's chosen EMO.	All staff are newly hired as employees of the CEO Group and its EMO.	Staff are transferred or laid off.
Master Contract	Will have an addendum as needed to implement education plan, calendar and transfer language	Will have addendum as needed to implement education plan, calendar and transfer language	Will not start with any prior master contract. Teachers may form new union with CEO group	NA
Salaries & Benefits	Remain as is in master contract with adjustment as/if needed for calendar via addendum.	Remain as is in master contract with adjustment as/if needed for calendar via addendum.	Are newly established and set to fair market. Employees remain public school employees with MPSRs.	NA
Building Administrator	CEO decides in accordance with MDE rules for transformation.	CEO decides in accordance with rules for turn-around.	CEO hires new or rehires existing to CEO/EMO entity	NA
EMO			CEO will select entity to serve as EMO/ISD may be one.	NA

APPENDIX C: SUMMARY OF ACTIONS FOR CEO/ISD STRATEGY

Grants (Grants that applied to CEO school must stay in place)	Will write CEO school improvement plan so it can be included in all home district grants with pro-rata per pupil flow through.	Will write school improvement plan as part of home district plan in order to receive pro-rata share of grants.	To extent possible CEO school restart model will stay part of home district grants as with other two models.	Grant funds are reassigned to home district schools absorbing students. For charter school, closure will require reassignment of students to their home districts or other charter schools.
High Schools and Middle Schools	Diplomas will continue to be granted by the home district for students completing a program meeting the MMC requirements of Michigan, not necessarily the local district requirements; the home district may issue diplomas with designation for CEO group; CEO Group will pay its share of graduation costs. Athletics and other extra-curriculars will continue and be jointly operated as defined in a contract between the CEO and home district. Restart model may require CEO school issuing diplomas itself.			

[i] (1) … each year, the superintendent of public instruction shall publish a list identifying the public schools in this state that the department has determined to be among the lowest achieving 5% of all public schools in this state, as defined for the purposes of the federal incentive grant program created under sections 14005 and 14006 of title XIV of the American recovery and reinvestment act of 2009, Public Law 111---5.

[ii] http://www.michigan.gov/documents/mde/Priority_School_Brfing_465230_7.pdf

[iii] The state school reform/redesign officer is responsible directly to the superintendent of public instruction to ensure that the purposes of this section are carried out, and accordingly the position of state school reform/redesign officer should be a position within the department that is exempt from the classified state civil service.